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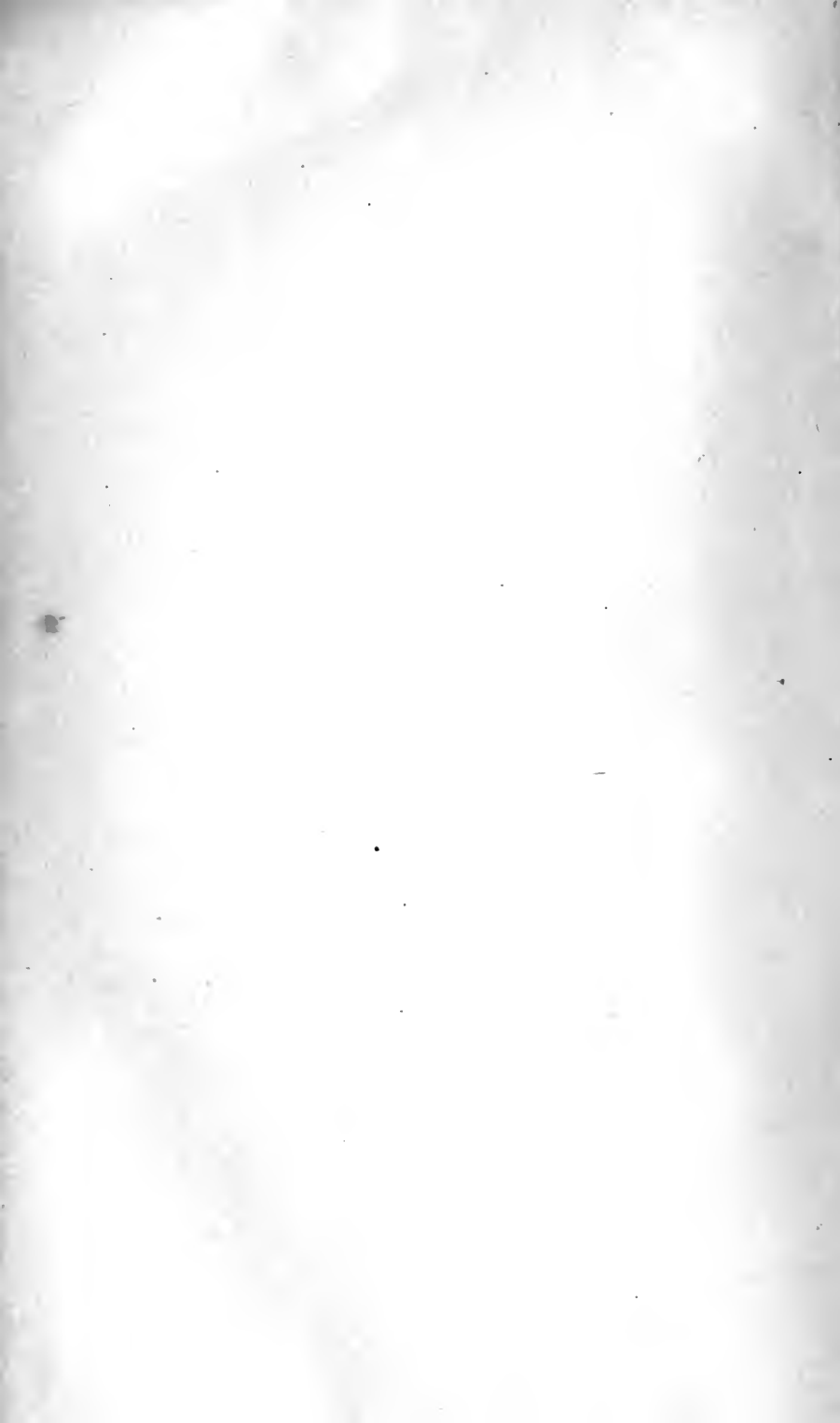
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THE LAW
OF
PRIVATE CORPORATIONS

BASED UPON THE STATUTES OF THE STATE OF WASHINGTON,
AND THE DECISIONS OF THE SUPREME COURT
OF THE STATE OF WASHINGTON,

WITH THE GENERAL CONSTITUTIONAL AND LEGISLATIVE
PROVISIONS OF THE STATE OF WASHINGTON, AND
THE FORMS MOST COMMONLY USED BY
WASHINGTON CORPORATIONS.

BY
J. F. DOUGLAS
OF THE
SEATTLE BAR

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PREFACE.

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This book contains all the general constitutional and legislative provisions of the State of Washington, relating to corporations; an outline of the law of corporations, based as far as possible upon the statutes of the State of Washington and the decisions of the Supreme Court of the State of Washington; and the forms most commonly used by Washington corporations.

The author's design was to put the law of corporations, as set out in our statutes and established by the decisions of our Supreme Court, in convenient form for the use of lawyers, and at the same time in a form that would make a useful book for any person who wished to obtain a working knowledge of our corporation laws.

Great care has been taken to make the work accurate. In the belief that this book will be found useful, it is now submitted to the public.

J. F. DOUGLAS.

April 1, 1904.

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PART I

CONSTITUTIONAL AND LEGISLA-
TIVE PROVISIONS

CONSTITUTIONAL PROVISIONS.

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CONSTITUTIONAL PROVISIONS.

Private corporations—Laws may be changed.

§ 1. Corporations may be formed under general laws, but shall not be created by special acts. All laws relating to corporations may be altered, amended or repealed by the legislature at any time, and all corporations doing business in this state may, as to such business, be regulated, limited or restrained by law.

Article XII, Sec. 1, Const.

Existing charters not acted upon of no force.

§ 2. All existing charters, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business commenced in good faith, at the time of the adoption of this constitution, shall thereafter have no validity.

Article XII, Sec. 2, Const.

Charters shall not be extended.

§ 3. The legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this state.

Article XII, Sec. 3, Const.

Liability of stockholders.

§ 4. Each stockholder in all incorporated companies, except corporations organized for banking or insurance purposes, shall be liable for the debts of the corporation to the amount of his unpaid stock and no more, and one or more stockholders may be joined as parties defendant in suits to recover upon this liability.

Article XII, Sec. 4, Const.

“Corporation” defined—Action by and against.

§ 5. The term “corporation,” as used in this article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and shall be subject to be sued, in all courts, in like cases as natural persons.

Article XII, Sec. 5, Const.

Limitation on issuance of stock and bonds—Changing capital stock.

§ 6. Corporations shall not issue stock, except to bona fide subscribers therefor, or their assignees; nor shall any corporation issue any bond or other obligation for the payment of money, except for money or property received or labor done. The stock of corporations shall not be increased except in pursuance of a general law, nor shall any law authorize the increase of stock, without the consent of the person or persons holding the larger amount in value of the stock, nor without due notice of the proposed increase having been previously given in

such manner as may be prescribed by law. All fictitious increase of stock or indebtedness shall be void.

Article XII, Sec. 6, Const.

Foreign corporations.

§ 7. No corporation organized outside the limits of this state shall be allowed to transact business within the state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this state.

Article XII, Sec. 7, Const.

Burdens follow franchise on alienation.

§ 8. No corporation shall lease or alienate any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor, or grantor, lessee, or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges.

Article XII, Sec. 8, Const.

State shall not loan its credit.

§ 9. The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association or corporation.

Article XII, Sec. 9, Const.

Corporate property liable to eminent domain by the state.

§ 10. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent

the legislature from taking the property and franchise of incorporated companies, and subjecting them to public use the same as the property of individuals.

Article XII, Sec. 10, Const.

Corporations shall not issue money—Liability of stockholders in bank.

§ 11. No corporation, association or individual shall issue or put in circulation as money anything but the lawful money of the United States. Each stockholder of any banking or insurance corporation or joint stock association shall be individually or personally liable, equally and ratably, and not one for another, for all contracts, debts and engagements of such corporation or association accruing while they remain such stockholders to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares.

Article XII, Sec. 11, Const.

Shuey v. Adair, 24 Wash. 378; 64 Pac. 536.

Kiggins v. Munday, 19 Wash. 233; 52 Pac. 955.

Wilson v. Book, 13 Wash. 676; 43 Pac. 939.

Shuey v. Holmes, 21 Wash. 223; 57 Pac. 818.

Haworth v. Ellwanger, 86 Fed. 54.

Personal liability of bank officer for deposit if bank insolvent.

§ 12. Any president, director, manager, cashier, or other officer of any banking institution who shall receive or assent to the reception of deposits after he shall have knowledge of the fact that such banking institution is

insolvent or in failing circumstances shall be individually responsible for such deposits so received.

Article XII, Sec. 12, Const.

Blake v. State Savings Bank, 12 Wash. 619; 41 Pac. 909.

Mallon v. Hyde, 76 Fed. Rep. 388.

Common carriers subject to legislative control—Carriers shall connect and exchange passengers and freight.

§ 13. All railroad, canal, and other transportation companies are declared to be common carriers and subject to legislative control. Any association or corporation organized for the purpose, under the laws of this state, shall have the right to connect at the state line with railroads of other states. Every railroad company shall have the right with its road, whether the same is now constructed and or may hereafter be constructed, to intersect, cross or connect with any other railroad, and when such railroads are of the same or similar gauge, they shall at all crossings and at all points, where a railroad shall begin or terminate at or near any other railroad, form proper connections so that the cars of any such railroad companies may be speedily transferred from one railroad to another. All railroad companies shall receive and transport each the other's passengers, tonnage, and cars without delay or discrimination.

Article XII, Sec. 13, Const.

Seattle, etc., Ry. v. State, 7 Wash, 150; 34 Pac. 551.

Pooling prohibited.

§ 14. No railroad company or other common carrier shall combine or make any contract with the owners of

any vessel that leaves port or makes port in this state, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

Article XII, Sec. 14, Const.

Discrimination prohibited—Short haul—Commutation tickets.

§ 15. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state, or coming from or going to any other state. Persons and property transported over any railroad or by any other transportation company, or individual, shall be delivered at any station, landing, or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

Article XII, Sec. 15, Const.

Northwestern Warehouse Co. v. Oregon Ry. & Nav. Co., 32 Wash. 218; 73 Pac. 388.

Competing railroads shall not consolidate.

§ 16. No railroad corporation shall consolidate its stock, property or franchise with any other railroad corporation owning a competing line.

Article XII, Sec. 16, Const.

Rolling stock personalty.

§ 17. The rolling stock and other movable property belonging to any railroad company or corporation in this state shall be considered personal property, and shall be liable to taxation and to execution and sale in the same manner as the personal property of individuals and such property shall not be exempted from execution and sale.

Article XII, Sec. 17, Const.

Cited, *Hinchman v. Point Defiance Ry. Co.*, 14 Wash. 349; 44 Pac. 1867.

Cited in second appeal, *Id.*, 17 Wash. 399 (401); 49 Pac. 1061.

Railroad rates—Commission.

§ 18. The legislature shall pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight, and to correct abuses and to prevent discrimination and extortion in the rates of freight, and passenger tariffs on the different railroads and other common carriers in the state, and shall enforce such laws by adequate penalties. A railroad and transportation commission may be established and its powers and duties fully defined by law.

Article XII, Sec. 18, Const.

Telephone companies may construct lines—Exchange of messages—Eminent domain.

§ 19. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual shall have the right to construct and maintain lines of telegraph and telephone within this state, and said companies shall receive and transmit each other's

messages without delay or discrimination, and all of such companies are hereby declared to be common carriers and subject to legislative control. Railroad corporations organized or doing business in this state shall allow telegraph and telephone corporations and companies to construct and maintain telegraph lines on and along the rights of way of such railroads and railroad companies, and no railroad corporation organized or doing business in this state shall allow any telegraph corporation or company any facilities, privileges or rates for transportation of men or material or for repairing their lines not allowed to all telegraph companies. The right of eminent domain is hereby extended to all telegraph and telephone companies. The legislature shall, by general law of uniform operation, provide reasonable regulations to give effect to this section.

Article XII, Sec. 19, Const.

State ex rel. Tel. Co. v. Spokane, 24 Wash. 53; 63 Pac. 1116.

Passes prohibited.

§ 20. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount, other than is sold to the public generally, to any member of the legislature, or to any person holding any public office within this state. The legislature shall pass laws to carry this provision into effect.

Article XII, Sec. 20, Const.

Muldoon v. Seattle Ry. Co., 10 Wash. 311; 38 Pac. 995; 38 Am. St. 901; 22 L. R. A. 794.

Express companies—Rights on railroads.

§ 21. Railroad companies now or hereafter organized

or doing business in this state, shall allow all express companies organized or doing business in this state transportation over all lines of railroad owned or operated by such railroad companies upon equal terms with any other express company, and no railroad corporation organized or doing business in this state shall allow any express corporation or company any facilities, privileges or rates for transportation of men or materials or property carried by them or for doing the business of such express companies not allowed to all express companies.

Article XXI, Sec. 21, Const.

Monopolies and trusts prohibited.

§ 22. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership, or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever for the purposes of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their franchise.

Article XXI, Sec. 22, Const.

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- 100. Appointment of receiver.

Formation of, Generally.

§ 23. Corporations for manufacturing, mining, milling, wharfing and docking, mechanical, banking, mercantile, improvement and building purposes, or for the building, equipping and managing water-flumes for the transportation of wood and lumber, or for the purpose of building, equipping and running railroads, or constructing canals, or irrigating canals, or engaging in any other

species of trade or business, may be formed according to the provisions of this chapter; such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to none others: Provided, that no such corporation shall commence business or institute proceedings to condemn land for corporate purposes until the whole amount of its capital stock has been subscribed: And Provided further, that the provisions of the foregoing proviso shall not apply to corporations engaged exclusively in loaning money on real estate nor to corporations engaged exclusively in raising money from, and loaning or repaying it to, their own members, and which confine their loaning and business operations wholly to the counties of their principal place of business, respectively, and to the counties adjacent and adjoining thereto.

P. C. § 7053.

B. C. § 4250.

Carroll v. Pacific Nat. Bank, 19 Wash. 639; 54 Pac. 32.

Seattle Trust Co. v. Pitner, 18 Wash. 401; 51 Pac. 1048.

Ramsey v. Tacoma Land Co., 31 Wash. 351; 71 Pac. 1024.

Hastings v. Anacortes Packing Co., 29 Wash. 224; 69 Pac. 776.

Denny Hotel Co. v. Schram, 6 Wash. 134; 32 Pac. 1002; 36 Am. St. 130.

Birge v. Browning, 11 Wash. 249; 39 Pac. 643.

Spokane v. Amsterdamsch, etc., 22 Wash. 172; 60 Pac. 141.

McKay v. Elwood, 12 Wash. 579; 41 Pac. 919.

Brown v. Elwell, 17 Wash. 442; 49 Pac. 1068.

Articles to be filed.

§ 24. Any two or more persons, who may desire to form a company for one or more of the purposes specified in the preceding section, shall make and subscribe written articles of incorporation in triplicate and acknowledge the same before any officer authorized to take the acknowl-

edgement of deeds, and file one of such articles in the office of the secretary of state, and another in the office of the county auditor of the county in which the principal place of business of the company is intended to be located, and retain the third in the possession of the corporation. Said articles shall state the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for such length of time (not less than two, nor more than six months) as may be designated in such certificate, and the name of the city, town or locality and county in which the principal place of business of the company is to be located. Amendments may be made to the articles of incorporation by supplemental articles, executed and filed the same as the original articles.

P. C. § 7054.

B. C. § 4251.

1 H. C. § 1498.

Bash v. Culver Gold Mining Co., 7 Wash. 122; 34 Pac. 462.

King v. Ilwaco Ry. & Nav. Co., 1 Wash. 127; 23 Pac. 924.

List of officers to be filed.

§ 25. Every corporation heretofore organized under the laws of the Territory or State of Washington and every corporation which may hereafter be organized under the laws of this state, shall, on or before the second Tuesday of January of each year, and at such other times as such corporation may elect so to do, file with the county auditor of the county in which such corporation has its principal place of business, a statement, sworn to by its

president and attested by its secretary and sealed with its corporate seal, containing a list of all its officers and their respective titles of office, names and addresses, and the term of office for which they have been chosen.

Laws '95, p. 355.

P. C. § 7055.

B. C. § 4259.

Corporations hereafter organized.

§ 26. Every corporation which shall be hereafter organized under the laws of this state shall, within thirty days after it shall have filed its certificate of incorporation with the county auditor of the county in which it has its principal place of business, file with such county auditor a statement, sworn to by its president and attested by its secretary and sealed with its corporate seal, containing a list of all of its officers and their respective titles of office, names and addresses, and the term of office for which they have been chosen.

P. C. § 7056.

B. C. § 4260.

Articles as evidence.

§ 27. A copy of any certificate of incorporation filed in pursuance of this act and certified by the auditor of the county in which it is filed, or his deputy, or by the secretary of state, shall be received in all the courts and places as prima facie evidence of the facts therein stated.

P. C. § 7057.

B. C. § 4252.

1 H. C. § 1499.

State v. Pittam, 32 Wash. 137; 72 Pac. 1042.

Spokane & Idaho Lumber Co. v. Loy, 21 Wash. 501; 58 Pac. 672; 60 Pac. 1119.

Knapp, Burrell & Co. v. Strand, 4 Wash. 686; 49 Pac. 1063.

Brown v. Elwell, 17 Wash. 442; 49 Pac. 1068.

Frost v. Ainslie Lumber Co., 3 Wash. 241; 28 Pac. 354.

Yakima Nat. Bank v. Knipe, 6 Wash. 348; 33 Pac. 834.

Garneau v. Port Blakeley Mill Co., 8 Wash. 467; 36 Pac. 463.

Stanford Land Co. v. Steidle, 28 Wash. 72; 68 Pac. 178.

Powers of the corporation.

§ 28. When the certificate shall have been filed the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and shall have power:

1. To sue and be sued in any court having competent jurisdiction.

2. To make and use a common seal and to alter the same at pleasure.

3. To purchase, hold, mortgage, sell and convey real and personal property.

4. To appoint such officers, agents, and servants as the business of the corporation shall require; to define their powers, prescribe their duties, and fix their compensation.

5. To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of two-thirds of the stockholders as hereinafter provided.

6. To make by-laws not inconsistent with the laws of the congress of the United States, and of this state.

7. The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in the articles of incorporation.

P. C. § 7058; B. C. § 4230; 1 H. C. 1500.

Denny Hotel Co. v. Schram, 6 Wash. 134; 32 Pac. 1002; 36 Am. St. 130.

Parsons v. Tacoma Smelting, etc., Co., 25 Wash. 492; 65 Pac. 765.

Stewart v. Gould, 8 Wash. 367; 36 Pac. 277.

Saunders v. United States Marble Co., 25 Wash. 475; 65 Pac. 782.

Graton & Knight Mnfg. Co. v. Redelsheimer, 28 Wash. 370; 68 Pac. 879.

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Groveland Imp. Co. v. Farmers' Supply Co., 25 Wash. 344; 65 Pac. 529; 87 Am. St. 755.

Anderson v. Wallace Lumber & Mfg. Co., 30 Wash. 147; 70 Pac. 247.

Dexter Horton & Co. v. Long, 2 Wash. 435; 27 Pac. 271; 26 Am. St. 867.

Seal v. Puget Sound Loan, etc., Co., 5 Wash. 422; 32 Pac. 214.

Tootle v. First Nat. Bank, 6 Wash. 181; 33 Pac. 345.

Duggan v. Pacific Boom Co., 6 Wash. 593; 34 Pac. 157; 36 Am. St. 182.

Carrigan v. Port Crescent Imp. Co., 6 Wash. 590; 34 Pac. 148.

Elwell v. Puget Sound, etc., Ry., 7 Wash. 487; 35 Pac. 376.

Vincent v. Snoqualmie Mill Co., 7 Wash. 566; 35 Pac. 396.

Roberts v. Washington Water Power Co., 19 Wash. 392; 53 Pac. 664.

Atlantic Trust Co. v. Behrend, 15 Wash. 466; 46 Pac. 642.

Allen v. Olympia L. & P. Co., 13 Wash. 307; 43 Pac. 55.

Glover v. Rochester German Ins. Co., 11 Wash. 143; 39 Pac. 380.

Miller v. Washington So. Ry. Co., 11 Wash. 414; 39 Pac. 673.

Fernald v. Spokane, etc., Co., 31 Wash. 672; 72 Pac. 462.

West Seattle L. & I. Co. v. Novelty Mill Co., 31 Wash. 435; 72 Pac. 71.

Manhattan Trust Co. v. Seattle Coal & Iron Co., 19 Wash. 493; 53 Pac. 951.

McKay v. Elwood, 12 Wash. 579; 41 Pac. 919.

Spokane v. Amsterdamsch, etc., 22 Wash. 172; 60 Pac. 141.

- Klosterman v. Mason County, etc., R. R. Co., 8 Wash. 281; 36 Pac. 136.
Washington Mill Co. v. Sprague Lumber Co., 19 Wash. 165; 52 Pac. 1067.
Com'l Electric L. & P. Co. v. Tacoma, 17 Wash. 661; 50 Pac. 592.
Budd et al. v. Walla Walla Printing & Pub. Co., 2 W. T. 347; 7 Pac. 896.
Gilbert v. Seates Mfg. Co., 98 Fed. Rep. 208.
Earle v. Seattle L. S. & E. Ry., 56 Fed. Rep. 909.

Exercised by trustees.

§ 29. The corporate powers of a corporation shall be exercised by a board of not less than two trustees, who shall be stockholders in the company, and at least one of whom shall be a resident of the State of Washington, and a majority of them citizens of the United States, who shall, before entering upon the duties of their office, respectively take and subscribe to an oath, as provided by the laws of this state, and who shall, after the expiration of the term of the trustees first elected, be actually elected, by the stockholders, at such time and place, within this state, and upon such notice and in such manner, as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he may own, or represent by proxy, shares of stock, and the person or persons receiving the greatest number of votes shall be trustee or trustees: Provided, That nothing herein contained shall prevent any corporation, by their by-laws, limiting such bona fide shareholder to a single vote, or one vote for every full share of paid-up stock, or its equivalent in assessable stock, disregarding the number of shares of stock he may own. It shall be competent, at any time, for two-thirds of the stockholders of any corporation organized under this chapter

to expel any trustee from office, and to elect another to succeed him. In all cases where a meeting of the stockholders is called for the purpose of expelling a trustee and electing his successor, such notice shall be given of the meeting as the by-laws of the company may require. Whenever any vacancy shall happen among the trustees by death, resignation or otherwise, except by removal and the election of his successor as herein provided, it shall be filled by appointment of the board of trustees. Every such corporation shall at all times keep at its principal place of business in this state an officer or officers, agent or agents, upon whom service of legal process may be made, in conformity with the law: Provided, That service of such process may be made at any time upon any resident trustee of such corporation.

P. C. § 7059.

B. C. § 4255.

Burns v. Commencement Bay Land, etc., Co., 4 Wash. 558; 30 Pac. 668, 709.

Baggot v. Turner, 21 Wash. 339; 58 Pac. 212.

Standard Gold Mining Co. v. Byers, 31 Wash. 100; 71 Pac. 766.

Spokane v. Amsterdamsch, etc., 22 Wash. 172; 60 Pac. 141.

State ex rel. Mitchell v. Horan, 22 Wash. 197; 60 Pac. 135.

Budd et al. v. Walla Walla Printing Co., 2 Wash. T. 347; 7 Pac. 896.

Lapse of election of trustees.

§ 30. If it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of the company the corporation shall not for that reason be dissolved; but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding

upon the company until their successors are elected and qualified.

P. C. § 7060.

B. C. § 4256.

1 H. C. § 1503.

Quorum.

§ 31. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

P. C. § 7061.

B. C. § 4257.

1 H. C. § 1504.

Parsons v. Tacoma Smelting, etc., Co., 25 Wash. 492; 65 Pac. 765.

First meeting.

§ 32. The first meeting of the trustees shall be called by a notice signed by one or more persons named as trustees in the certificate, setting forth the time and place of the meeting, which notice shall be delivered personally to each trustee, or published at least twenty days in some newspaper in the county in which the principal place of business of the corporation, or if no newspaper is published in the county, then in some newspaper nearest thereto in the state.

P. C. § 7062.

B. C. § 4258.

1 H. C. § 1505.

Budd et al. v. Walla Walla Printing Co., 2 Wash. T. 347; 7 Pac. 896.

Stock transferable.

§ 33. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as

shall be prescribed by the by-laws of the company; but no transfer shall be valid except between the parties thereto, until the same shall have been entered upon the books of the company, so as to show the names of the parties, by and to whom transferred, the numbers and designation of the shares and the date of the transfer.

P. C. § 7063.

B. C. § 4261.

1 H. C. § 1506.

Port Townsend National Bank v. Port Townsend Gas & Fuel Co., 6 Wash. 597; 34 Pac. 155.

Payment of subscriptions—Banks.

§ 34. The stockholders of any corporation formed under this act may in the by-laws of the company prescribe the times, manner and amounts in which payments of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the trustees shall have the power to demand and call in from the stockholders the sums by them subscribed, at such time and in such manner, payments or installments, as they may deem proper. In all cases notice of each assessment shall be given to the stockholders personally, or by publication in some newspaper published in the county in which the principal place of business of the company is located; and if none be published in such county, then in the newspaper nearest to said principal place of business in the state. If after such notice has been given any stockholder shall make default in the payment of assessments upon the shares held by him, so many of said shares may be sold as will be necessary for the payment of the assessment upon all the shares held by him, her or them. The sale of said shares shall be made as prescribed in the by-laws of the company, but shall in

no case be made at the office of the company. No sale shall be made except at public auction, to the highest bidder, after a notice of four weeks, published as above directed in this section, and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale, for the smallest number of shares or portion of a share, as the case may be, shall be deemed the highest bidder: Provided, That the amount of the capital stock of any bank incorporated under this act shall not be less than twenty-five thousand dollars, to be divided into shares of one hundred dollars each, all of which shares shall be subscribed, and three-fifths of such capital stock shall be paid in before commencement of business, the remainder to be subject to the call of the trustees, and it shall be the duty of the trustees of any such bank to file with their articles of incorporation their affidavit that three-fifths of the capital stock of such bank has been actually paid in.

P. C. § 7064.

B. C. § 4262.

1 H. C. § 1507.

Cole v. Satsop R. R. Co., 9 Wash. 487; 37 Pac. 700; 43 Am. St. 858.

Elderkin v. Peterson, 8 Wash. 674; 36 Pac. 1089.

Burch v. Taylor, 1 Wash. 245; 24 Pac. 438.

Stewart v. Walla Walla, etc., Pub. Co., 1 Wash. 521; 20 Pac. 605.

Z. C. Miles Co. v. Robertson, 5 Wash. 352; 31 Pac. 970.

Denny Hotel Co. v. Gilmore, 6 Wash. 152; 32 Pac. 1004.

Dunlap v. Rauch, 24 Wash. 620; 64 Pac. 807.

Troy v. Morse, 22 Wash. 280; 60 Pac. 648.

Sligh v. Shelton S. W. Ry. Co., 20 Wash. 16; 54 Pac. 763.

Manhattan Trust Co. v. Seattle Coal & Iron Co., 16 Wash. 499; 48 Pac. 333, 737; but see *S. C.* 19 Wash. 493; 53 Pac. 951.

Adamant Mfg. Co. v. Wallace, 16 Wash. 614; 48 Pac. 415.

Turner v. Bailey, 12 Wash. 634; 42 Pac. 115.

Kroenert v. Johnston, 19 Wash. 96; 52 Pac. 605.

Dearborn v. Washington Savings Bank, 18 Wash. 8; 50 Pac. 575.

Fiduciaries may vote stock.

§ 35. Whenever any stock is held by a person as executor, administrator, guardian or trustee, he shall represent such stock at all meetings of the company and may vote accordingly as a stockholder.

P. C. § 7065.

B. C. § 4263.

1 H. C. 1508.

Stock may be voted though pledged.

§ 36. Any stockholder may pledge his stock by a delivery of the certificate or other evidence of his interest, but may, nevertheless, represent the same at all meetings and vote as a stockholder.

P. C. § 7066.

B. C. § 4264.

1 H. C. § 1509.

Brown v. Union Savings, etc., Ass'n, 28 Wash. 657; 69 Pac. 383.

Port Townsend National Bank v. Port Townsend Gas & Fuel Co.,
6 Wash. 597; 34 Pac. 155.

Dearborn v. Washington Savings Bank, 18 Wash. 8; 50 Pac. 575.

Spokane v. Amsterdamsch, etc., 22 Wash. 172; 60 Pac. 141.

Dividends only from profits—Reduction of stock.

§ 37. It shall not be lawful for the trustees to make any dividend except from the net profits arising from the business of the corporation, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company, nor to reduce the capital stock of the company unless in the manner prescribed in this act, or the articles of incorporation or by-laws; and in case of any violation of the provisions of this section, the trustees, under whose administration

the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual or private capacities, be jointly or severally liable to the corporation and the creditors thereof in the event of its dissolution, to the full amount so divided, or reduced, or paid out; provided, that this section shall not be construed to prevent a division and distribution of the capital stock of the company which shall remain after the payment of all its debts upon the dissolution of the corporation or the expiration of its charter.

P. C. § 7067.

B. C. § 4265.

1 H. C. § 1510.

Tait v. Pigott, 32 Wash. 345; 73 Pac. 364.

Shuey v. Adair, 24 Wash. 378; 64 Pac. 388.

Power to issue negotiable paper.

§ 38. No corporation organized under this act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidence of debt for circulation as money, except bonds by railroad companies, which shall at no time exceed double the amount of paid up stock issued by said company. Each and every stockholder shall be personally liable to the creditors of the company to the amount of what remains unpaid upon his subscription to the capital stock and not otherwise: Provided, that the stockholders of every bank incorporated under this act shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association accruing while they remain such stockholders,

to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares, and all such banking corporations shall file, on the first Monday in June, each year, with the state auditor, a report sworn to by its president, vice president or cashier of the resources and liabilities, stating the amount of deposits, the aggregate loans and amount upon each class of securities, the names and residences of the shareholders and number of their shares, the trustees or officers for the time being, and any other matters affecting the safety of their deposits or the interest of their creditors; and such banking corporations shall have power to exercise, by its board of trustees or duly authorized officers or agents, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits, buying and selling exchange, coin and bullion, by loaning money on real estate or personal security, to accept and execute all trusts, fiduciary or otherwise as may be committed to such bank or corporation by any person, persons or corporation, or by the order or direction of any court, and may do any other business pertaining to banking. Any person or persons who shall be engaged in the business of banking who shall put up or cause to be put up or exhibit any sign or advertisement, purporting thereby to be an incorporated bank or shall do business under a corporate name when they are not such, shall, on conviction thereof, be adjudged guilty of a misdemeanor and punished by a fine not exceeding two hundred dollars: Provided further, that the provisions of this section shall not apply to the debentures or bonds of any company duly incorporated under the provisions of this act, the payment of which

debentures or bonds shall be secured by an actual transfer of real estate securities for the benefit and protection of purchasers of said debentures or bonds, such securities to be at least equal in amount to the par value of such bonds or debentures, and to be first liens upon unincumbered real estate, worth at least twice the amount loaned thereon; provided further, however, that such issue of debentures or bonds shall in no cases exceed ten times the capital stock of the issuing corporation.

P. C. § 7068.

B. C. § 4266.

1 H. C. § 1511.

Kiggins v. Munday, 19 Wash. 233; 52 Pac. 855.

Shuey v. Holmes, 22 Wash. 193; 60 Pac. 402.

Holder of stock as collateral not liable.

§ 39. No person holding stock as executor, administrator, guardian or trustee, or holding it as collateral security, or in pledge, shall be personally subject to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder, and the estate and funds in the hands of the executor, administrator or guardian or trustee shall be liable in like manner and to the same extent as the testator, or intestate, or the ward or person interested in the trust fund would have been if he or she had been living and competent to act and hold the stock in his or her name.

P. C. § 7069.

B. C. § 4268.

1 H. C. § 1512.

Record of stockholders—Inspection.

§ 40. It shall be the duty of the trustees of every company incorporated under this act, to keep a book containing the names of all persons, alphabetically arranged, who are or shall be stockholders of the corporation and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares, which book, during the usual business hours of the day, on every day excepting Sundays and the legal holidays, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stockholder or creditor of the company shall have the right to make extracts from such book, or to demand and receive from the clerk or other officer having the charge of such book, a certified copy of any entry therein, or to demand and receive from any clerk or officer a certified copy of any paper placed on file in the office of the company, and such book and certified copy shall be presumptive evidence of the fact therein stated in any action or proceeding against the company or any one or more of the stockholders.

P. C. § 7070.

B. C. § 4269.

1 H. C. § 1513.

False entries.

§ 41. If at any time the clerk or other officer having charge of such book shall make any false entry or neglect to make any proper entry therein, or having the charge of any papers of the company shall refuse or neglect to exhibit the same or allow the same to be inspected, or extracts to be taken therefrom, or to give a

certified copy of any entry as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the injured party a penalty of not less than one hundred nor more than one thousand dollars and all damages resulting therefrom, to be recovered in any action of debt in any court having competent jurisdiction; and for neglecting to keep such book for inspection as aforesaid, the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect, to be sued for and recovered in the name of the people in the superior court of the county in which the principal place of business of the corporation is located.

P. C. § 7071.

B. C. § 4270.

1 H. C. § 1514.

Increase or decrease of capital stock.

§ 42. Any company incorporated under this act, may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital; provided, that the deposits in any trust company or banking corporation shall not be included in ascertaining the debts and liabilities of such trust company or banking corporation for the purposes of this section: Provided further, that this act shall not relieve such trust company or banking corporation or the stockholders of any such

trust company or banking corporation from liability, although contingent, or remote, incurred or entered into by such trust company or banking corporation prior to the reduction of its capital, including liability for deposits: Provided further, that before any banking corporation, or trust company, can reduce its capitalization, a notice, in writing, must be mailed to the last known postoffice address of its depositors, setting forth the fact that the said banking corporation, or trust company, intends to decrease its capitalization, showing the amount of its capitalization and the amount to which it intends to decrease the same; and proof of the mailing of such notices shall be made by affidavit of the party mailing the same, showing the names and addresses of the persons to whom mailed.

Laws '99, p. 174.

P. C. § 7072.

Stockholders' meeting—Vote.

§ 43. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by a notice signed by at least a majority of the trustees, and published at least eight weeks in some newspaper published in the county where the principal place of business of the company is located; or if no newspaper is published in the county, then the newspaper nearest thereto in the state, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of the stock shall be necessary to increase or diminish the amount of capital stock.

P. C. § 7073.

B. C. § 4272.

1 H. C. § 1516.

Statement to be filed.

§ 44. If at a meeting so called a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out and signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the trustees, and filed as required by section 2422 (Sec. 24), and when so filed the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

P. C. § 7074.

B. C. § 4273.

1 H. C. § 1517.

On dissolution—Funds held in trust for creditors.

§ 45. Upon the dissolution of any corporation formed under the provisions of this act the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation by the name of the trustees of such corporation, collect and pay the outstanding debts, settle all its affairs and divide among the

stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

P. C. § 7075.

B. C. § 4274.

1 H. C. § 1518.

Strohl v. Seattle Nat'l Bank, 25 Wash. 28; 64 Pac. 916.

Potvin v. Denny Hotel Co., 26 Wash. 309; 66 Pac. 376.

Morrison v. Blue Star Nav. Co., 26 Wash. 541; 67 Pac. 244.

Deering v. Holcomb, 26 Wash. 588; 67 Pac. 240, 561.

Washington Liquor Co. v. Alladio Cafe Co., 28 Wash. 176; 68 Pac. 444.

Thompson v. Huron Lumber Co., 4 Wash. 600; 30 Pac. 741; 31 Pac. 25.

Leslie v. Wilshire, 6 Wash. 282; 33 Pac. 505.

Vincent v. Snoqualmie Mill Co., 7 Wash. 566; 35 Pac. 396.

Mayer v. Woolery, 10 Wash. 354; 39 Pac. 135.

Conover v. Hull, 10 Wash. 673; 39 Pac. 166; 45 Am. St. 810.

Brooks v. Skookum Mfg. Co., 9 Wash. 80; 37 Pac. 284.

Burrell v. Bennett, 20 Wash. 644; 56 Pac. 375.

Van Brocklin v. Queen City Printing Co., 19 Wash. 552; 53 Pac. 822.

Carroll v. Pacific Nat'l Bank, 19 Wash. 639; 54 Pac. 32.

Cook v. Moody, 18 Wash. 114; 50 Pac. 1020; 63 Am. St. 872.

Griffith v. Burlingame, 18 Wash. 429; 51 Pac. 1059.

Biddle Pur. Co. v. Port Townsend Steel, etc., Co., 16 Wash. 681; 48 Pac. 407.

Compton v. Schwabacher Bros. & Co., 15 Wash. 306; 46 Pac. 338.

Watterson v. Masterson, 15 Wash. 511; 46 Pac. 1041.

Barto v. Nix, 15 Wash. 563; 46 Pac. 1033.

Wilson v. Book, 13 Wash. 676; 43 Pac. 939.

New York N. E. Bank v. Metropolitan Bank, 28 Wash. 553; 68 Pac. 905.

Burch v. Taylor, 1 Wash. 245; 24 Pac. 438.

Bramel v. Manring, 18 Wash. 421; 51 Pac. 1050.

McRae v. Bowers Dredging Co., 86 Fed. Rep. 344.

Dissolution.

§ 46. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the superior judge of the county in which the office of the company is located, a petition to that effect, accompanied

by a certificate of its proper officers and setting forth that at a meeting of the stockholders called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the state. At the time and place appointed, or at any other time to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken necessary preliminary steps and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

P. C. § 7076.

B. C. § 4275.

1 H. C. § 1519.

Removal of office.

§ 47. Any corporation desiring at any time to remove its principal place of business into some other county in the state, shall file in the office of the county auditor a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town, or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest to the city, town or locality from which the principal place of business of such corporation is desired to be

removed. The formation or corporate acts of any corporation hereafter formed under this act shall not be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation: Provided, that within three months from the passage of this act such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest the city, town, or locality, and where the principal place of business of such corporation has been in fact located, designating the city, town or locality and county where its principal place of business shall be located. On compliance with the provisions of this section in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established, or removed at or to any designated city, town or locality, in the state.

P. C. § 7077.

B. C. § 4276.

1 H. C. § 1520.

Corporations validated.

§ 48. All persons who have organized themselves as a corporation under the provisions of this act for purposes other than those enumerated in section 2421 (Sec. 23), are hereby declared incorporate bodies, with all the powers the same as they would enjoy had they been incorporated for the purposes set forth in said section 2421 (Sec. 23).

P. C. § 7078.

Mining corporation—Subscription of stock.

§ 49. In incorporations already formed, or which may hereafter be formed under this act, where the amount

of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its by-laws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust or other instrument vest, or have vested in such corporation for mining purposes; such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: Provided, that the greater portion of said amount of capital stock shall have been so subscribed: And, provided further, that this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed, for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or express contract.

P. C. § 7079.

B. C. § 4280.

1 H. C. § 1558.

Act applies to water companies.

§ 50. The provisions of this act shall extend to and apply to all associations already formed under any law of this state, or hereafter to be formed under the provisions of this act, for the purpose of supplying any cities or towns in this state, or the inhabitants thereof with pure and fresh water.

P. C. § 7080.

B. C. § 4277.

1 H. C. § 1521.

Water company may condemn.

§ 51. Such water companies incorporated for the purposes specified in the preceding section shall have the right to purchase or take possession of and use and hold such lands and waters for the purposes of the company, lying without the limits of the city or town intended to be supplied with water upon making compensation therefor. The mode of proceeding to obtain possession of such lands for the use of the company, right of way for laying pipes and aqueducts for the use of the company, when the parties cannot agree shall so far as the same be applicable be as prescribed in act at section 5102: (See explanatory note, p. 94.) Provided, that nothing herein contained shall be so construed as to authorize the appropriation of water belonging to any person, unless the owner thereof shall refuse to supply said town or city with water after being requested so to do by the town board or city council.

P. C. § 7081.

B. C. § 4278.

1 H. C. § 1522.

Consent of town.

§ 52. Water companies hereafter incorporated under the provisions of this act must first obtain from the corporate authorities of a city or town intended to be supplied with water, the right or privilege so to do; but nothing herein contained shall affect parties now acting under legislative grants or franchises.

P. C. § 7082.

B. C. § 4279.

1 H. C. § 1523.

Powers of foreign corporations.

§ 53. Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this state, shall have full power and is hereby authorized, to sue and to be sued in any court having competent jurisdiction; to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of, in the corporate name all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its incorporation, and also any interest in real estate by mortgage or otherwise do [due] to or loans made by such foreign corporations within the boundaries of this state, either prior to or after the passage of this act, and generally do and perform every act and transact every kind of business within this state in the same manner and to the same extent as corporations incorporated and organized under the laws of this state are authorized to do under the laws of this state, by a compliance with all the conditions prescribed by the

second and third sections of this act (secs, 54, 55): Provided, however, that this act, shall not be so construed as to allow such foreign corporation to transact business within the state on more favorable conditions than are prescribed by law for similiar corporations organized under the laws of this state: And provided further, that no corporation, the majority of the capital stock of which is owned by aliens other than those who in good faith have declared their intentions to become citizens of the United States, shall acquire the ownership of any lands in this state, other than lands containing valuable deposits of minerals, metals, iron, coal or fire clay, and the necessary land for mills and machinery to be used in the development thereof, and the manufacture of products therefrom, except where acquired under mortgage or in good faith in the ordinary course of justice in the collection of debts; provided further, that no foreign corporation which is hereafter organized, which has among its other powers the business of dealing in real estate, and buying and selling the same, and for the purpose of carrying on a real estate brokerage business shall be permitted to transact such business of buying and selling, and dealing in real estate and carrying on a brokerage business therein in this state; but this prohibition shall not extend to any other business for the transaction of which such corporation may be organized.

P. C. § 7214; Laws '90, p. 288.

B. C. § 4291.

1H. C. § 1522.

Realty Co. v. Appolonio, 5 Wash. 437; 32 Pac. 219.

Oregon Mortgage Co. v. Carstens, 16 Wash. 165; 47 Pac. 421; 35 L. R. A. 841.

Daniel v. Gold Hill Mining Co., 28 Wash. 411; 68 Pac. 884.

La France, etc., Co. v. Mount Vernon, 9 Wash. 142; 37 Pac. 287; 38 Pac. 80; 43 Am St. 827.

Dearborn Foundry Co. v. Augustine, 5 Wash. 67; 31 Pac. 327.

Must file and record papers.

§ 54. Such corporations shall cause to be filed and recorded in the office of the secretary of state, a certified copy of its charter, articles of incorporation, memorandum of association, or certificate of incorporation certified to by the officer who is the custodian of the same, according to the laws of the state or territory, country or colony, where such corporation is incorporated, or who is authorized to issue certificates of incorporation, according to the laws of such state, territory, or foreign country or colony. The instruments herein required to be filed and recorded shall be attested by such certifying officer, under his hand and seal of office, which attestation shall be prima facie proof of the facts therein stated, and of the genuineness of the certificate. If such officer has no official seal, his certificate shall state that fact over his signature, and thereupon the secretary of state, or of the territory, in case of corporations within the United States, and the consul-general, consul, vice consul, deputy-consul, consular agent, or commercial agent of the United States, at or nearest to the place where such certificate is made, in the case of corporations not within the United States, shall certify, under his hand and seal of office, to the genuineness of the signature of the officer making the certificate, and to the fact that at the time of making such certificate the person making the same held the office described in the certificate.

P. C. § 7215.

B. C. § 4292.

1 H. C. § 1525.

Knapp, Burrell & Co. v. Strand, 4 Wash. 686; 30 Pac. 1063.

Huttig Bros. Mfg. Co. v. Denny Hotel Co., 6 Wash. 122; 32 Pac. 1073.

Edison, etc., Co. v. Canadian Pac. Nav. Co., 8 Wash. 370; 36 Pac. 260;
40 Am. St. 910; 24 L. R. A. 315.

Whitman Agl. Co. v. Strand, 8 Wash. 647; 36 Pac. 682.

Must appoint a resident agent.

§ 55. Such corporations shall also constitute and appoint an agent who shall reside at the place in the state where the principal business of the corporation is to be carried on, to be designated as hereinafter required. Such appointment shall be in writing, signed by the president or chief officer of such corporation, and shall be attested by its corporate seal, and shall contain the name of the agent, his place of residence and the place where the principal business of such is to be carried on, and shall authorize such agent to accept service of process in any action or suit pertaining to the property, business or transactions of such corporation within this state in which such corporation may be a party. The signature of such president or chief officer, attested by the corporate seal to such written appointment, shall be sufficient proof of the appointment of such agent. Such appointment, when duly executed, shall be filed for record in the office of the secretary of state by such corporation, and shall be there recorded; and such corporation shall have and keep continually some resident agent, empowered as aforesaid during all the time such corporation shall conduct or carry on any business within this state, and service of any process, pleading, notice or other paper shall be taken and held as due service on such corporations. Such corporation may change its agents or its principal

place of business, from time to time, by filing and recording with the secretary of state a new appointment, stating the change of such agent or the change in the principal place of business.

P. C. § 7216.

B. C. § 4293.

1 H. C. § 1526.

Penalty.

§ 56. Any foreign corporation doing business in this state which shall fail to comply with the provisions of sections 1525 (Sec. 54) and 1526 (Sec. 55) of 1 Hill's Annotated Statutes and Codes of Washington, shall be subject to a penalty of two hundred and fifty dollars, to be recovered in a civil action to be instituted by the attorney general in the name of the State of Washington, upon his being furnished with a sworn statement of facts sufficient to justify such action.

Acts '99, p. 100.

P. C. § 7217.

All penalties so recovered shall be paid into the general fund of the state treasury.

Acts '99, p. 100.

P. C. § 7217a.

Act does not apply to companies now doing business.

§ 57. No corporation which has heretofore complied with the laws of the State or Territory of Washington hitherto existing regarding foreign corporations, and has kept a duly appointed agent within the boundaries of the state as heretofore required, shall be required to file for

record or cause to be recorded the certified copies required by this act, or to execute or file for record or cause to be recorded a new appointment of agent as herein required.

P. C. § 7218.

B. C. § 4294.

1 H. C. § 1527.

County assessor shall report.

§ 58. It shall be the duty of each and every county assessor in this state to ascertain each and every year, at the time of the tax assessment of his county, the name of every foreign corporation doing business by agent or otherwise within his county, the nature of such business and the name of the agent of each of such corporations, if any there be, together with such agent's place of address, and shall within ten days from and after the compilation of such assessment, make out and deliver to the county auditor of his county, a full and complete list of the names of such corporations doing business in his counties, together with the nature of the business so carried on by each of such corporations, and the name of the resident agent of each of such corporations, if any there be, and the place of residence of each of such agents.

P. C. § 7219.

B. C. § 4295.

1 H. C. § 1528.

County auditors report to state auditors.

§ 59. It shall be the duty of each and every county auditor in this state to make out and transmit to the secretary of state, within thirty days next preceding the receipt by him from such county assessor, the lists provided

in section 2482 (Sec. 58), a full, true and concise statement of the names of such corporations, their place of business, the nature of business conducted by such corporations, together with the names of each and every agent of each of such corporations, if any there be, and the places of residence of such agents.

P. C. § 7220.

B. C. § 4296.

1 H. C. § 1529.

Fees.

§ 60. The fees for recording, under the provisions of this act, shall be the same as are allowed by law to the secretary of state, for certified copies of papers on file in his office.

P. C. § 7221.

B. C. § 4297.

1 H. C. § 1530.

Agent's liability.

§ 61. Any agent of any foreign corporation, conducting or carrying on business within the limits of this state, for and in the name of such corporation, contrary to any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail for a term not exceeding three months, or by both such fine and imprisonment.

P. C. § 7222.

B. C. § 4298.

1 H. C. § 1531.

County officers liability.

§ 62. Any county assessor failing to make out and deliver to the county auditor of his county a list within the time and in the manner provided in section 2485 (Sec. 61), and any county auditor failing to make out and transmit to the secretary of state a statement, within the time and in the manner provided in section 2482 (Sec. 58), shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding three hundred dollars.

P. C. § 7223.

B. C. § 4299.

1 H. C. § 1532.

Water power companies may condemn.

§ 63. The right of eminent domain for the purpose of appropriating real estate is hereby extended to all corporations that are now or that may hereafter be incorporated under the laws of this state, or of any state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power: Provided, however, that said right of eminent domain shall not be exercised in respect to any residence or business structure or structures.

Laws '01, p. 299.

P. C. § 5155.

Preliminary survey.

§ 64. Every corporation that is now or that may hereafter be incorporated under the laws of this state or of

any other state or territory of the United States and doing business in this state, for the purpose of conveying water by ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, shall have the right to enter upon any land between the termini of the proposed ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, for the purpose of examining, locating and surveying such ditches, flumes, pipe lines, tunnels or any other means for the utilization of water power, doing no unnecessary damage thereby.

P. C. § 5156.

The usual procedure.

§ 65. Every such corporation shall have the right, subject to the proviso contained in section 1 (Sec. 63) hereof, to appropriate real estate or other property for a right-of-way for such ditches, flumes, pipe lines, tunnels or other means of conveying water, and for any other corporate purposes, in the same manner and under the same procedure as now is or may be hereafter provided by law in the case of other corporations authorized by the laws of the state to exercise the right of eminent domain.

P. C. § 5157.

Corporations prior to 1872 may hold property.

§ 66. That all private corporations incorporated by the legislative assembly of the Territory of Washington prior to the 10th day of June, 1872, other than for religious purposes, be and they are hereby authorized to hold, acquire, own and possess real and personal property to the extent and to such an amount as to said corporations

may seem meet; anything in the acts incorporating said private corporations to the contrary notwithstanding.

P. C. § 7108.

B. C. § 4254.

1 H. C. § 1501.

Corporations prior to 1862 may make and secure debts.

§ 67. That all private corporations incorporated by the legislative assembly of the Territory of Washington prior to the first day of January, 1862, other than corporations created for religious purposes, be and they hereby are authorized (and) empowered to issue notes, bonds, mortgages or other evidences of indebtedness and to secure payment of the same by mortgage, trust deed or otherwise incumbering any real estate or personal property owned by said corporation. Said corporations shall have the power to buy, sell or otherwise deal in notes, bonds and stock of other corporations, and shall have power through their duly authorized officers to execute any and all instruments necessary to carry out the powers conferred upon said corporations by the provisions of this act.

P. C. § 7109.

B. C. § 4267.

Laborer's lien on property of corporation—Priorities.

§ 68. Every person performing labor for any person, company or corporation, in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, sawmill, lumber or timber company, shall have a prior lien on the franchise, earnings, and on all the real and personal property of said

person, company or corporation, which is used in the operation of its business to the extent of the moneys due him from such person, company or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of this claim therefor, as hereinafter provided; and no mortgage, deed of trust or conveyance shall defeat or take precedence over said lien.

P. C. § 6133.

B. C. § 5919.

Fitch v. Applegate, 24 Wash. 25; 64 Pac. 147.

Blumauer v. Clock, 24 Wash. 596; 64 Pac. 844.

In re Lawler, 110 Fed. 135.

Notice of claim.

§ 69. No person shall be entitled to the lien given by the preceding section, unless he shall, within ninety days after he has ceased to perform labor for such person, company or corporation, filed for record with the county auditor of the county in which said labor was performed, or in which is located the principal office of such person, company or corporation in this state, a notice of claim, containing a statement of his demand, after deducting all just credits and offsets, the name of the person, company or corporation, and the name of the person or persons employing claimant, if known, with the statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve a copy thereof on said person, company or corporation within thirty days after the same is so filed for record.

B. C. § 5920.

P. C. § 6134.

Service as in summons.

§ 70. Service of notice, as herein required, may be made in the same manner as summons in civil actions.

P. C. § 6135.

B. C. § 5921.

Foreclosure of lien.

§ 71. Any such lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed.

P. C. § 6136.

B. C. § 5922.

Payment by receiver.

§ 72. Whenever a receiver or assignee is appointed for any person, company or corporation, the court shall require such receiver or assignee to pay all claims for which a lien could be filed under this act, before the payment of any other debts or claims other than operating expenses.

P. C. § 6137.

B. C. 5923.

Any person failing to give list—Penalty.

§ 73. If any person or corporation shall give a false or fraudulent list, schedule or statement required by this act, or shall fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this act, he or it shall be liable to a penalty of not less than ten dollars nor more than two thousand dollars, to be recovered in any proper form of action in the name of the State of

Washington on the complaint of any person, such fine, when collected, to be paid into the county treasury to the credit of the general fund.

P. C. § 8633.

B. C. § 1697.

Fee for corporate articles.

§ 74. Every corporation incorporated under the laws of this state, or of any state or territory of the United States, or of any foreign state, having a capital stock divided into shares, shall pay to the secretary of the state, for the use of the state, the following fees: Every corporation having a capital stock, \$10; the said fee to be due and payable upon the filing of the articles of incorporation in the office of the secretary of state, and no such corporation shall have or exercise any corporate powers, or be permitted to do any business in this state, until the said fees shall have been paid, and the secretary of state shall not file any articles of incorporation or their equivalent or give any certificate thereof, until the said fees shall have been paid.

P. C. § 8467.

B. C. § 4285.

Supplemental articles.

§ 75. Every corporation desiring to file articles amendatory or supplemental, or certificate of increase or decrease of capital stock, shall pay to the secretary of state, for the use of the state, the fee of ten dollars.

P. C. § 8468.

B. C. § 4286.

Certified copies.

§ 76. The secretary of state shall charge for making a copy of any law, resolution, record or other document or paper on file in his office fifteen cents per folio; provided, no copy shall be furnished by the secretary of state unless under seal of the state, and shall charge for any certificate under seal of state, two dollars.

Laws 1903, p. 297.

Note.—This fee bill repeals sec. 8469 P. C. or sec. 4287 B. C.

Folio charge.

§ 77. The secretary of state shall charge for recording articles of incorporation fifteen cents per folio.

Laws 1903, p. 297.

This section repeals law heretofore in effect found in sec. 8470 P. C. or sec. 4288 B. C.

Annual tax—Penalty.

§ 78. Every corporation incorporated under the laws of this state, and every foreign corporation having its articles of incorporation on file in the office of the secretary of state shall, on or before the first day of July of each and every year, pay to the secretary of state, for the use of the state, the following license fees: Every corporation having a capital stock, ten dollars. Every corporation failing to pay the said annual license fee, on or before the first day of July of each and every year, and desiring to pay the same thereafter, and before the first day of January next following, shall pay to the secretary of state, for the use of the state, in addition to the

said license fee, the following further fee, as a penalty for such failure: Every corporation, two dollars and fifty cents. Every corporation failing to pay the said license fees and penalties on or before the thirty-first day of December of any year shall forfeit the sum of five dollars for every day which it shall continue to do business as a corporation after said date, to be recovered in an action in any court of competent jurisdiction.

P. C. § 8471.

B. C. § 4289.

State ex rel. Sterling Timber Co. v. Jenkins, 22 Wash. 494; 61 Pac. 141.

Annual license fee of ten dollars merely an excise upon right of corporation to exist and does not supersede the right to tax the franchise of the corporation.

Chehalis Boom Co. v. Chehalis County, 24 Wash. 135; 63 Pac. 1123.

Certain corporations excepted.

§ 79. This act shall not apply to corporations not for pecuniary profit, or to corporations organized for religious, social, fraternal, charitable, benevolent or educational purposes, nor to such insurance companies as are required to pay an annual license under the insurance laws of this state.

P. C. § 8472.

B. C. § 4290.

An act to prevent the duplication of corporate entitlements.

§ 80. Private corporations may be formed in the manner prescribed by the laws of this state governing corporations for any purpose for which individuals may lawfully associate. No corporation shall take the name of a corporation theretofore [heretofore] organized under the laws of this state, nor of any foreign corporation

having complied with the laws of this state, nor one so nearly resembling the name of such other corporation as to be misleading. The secretary of state shall refuse to file said articles of incorporation of any association or corporation violating the provisions of this act.

Laws 1903, p. 124.

An act to protect stockholders in corporations.

§ 81. Any superintendent, director, secretary, manager, agent, or other officer of any corporation formed or existing under the laws of this state, or transacting business in this state, or any person pretending or holding himself out as such superintendent, director, secretary, manager, agent or other officer, who shall wilfully subscribe, sign, indorse, verify or otherwise assent to the publication, either generally or privately, to the stockholders or to other persons dealing with such corporation, or its stock, any wilfully untrue and fraudulently exaggerated report, prospectus, account, statement of operations, values, business profits, expenditures, or prospects, or other paper or document intended to produce or give, or having a tendency to produce or give, to the shares of stock in such corporation a greater value than they really possess, or with the intention of defrauding any particular person or persons, or the public or persons generally, shall be deemed guilty of an offense against the laws of the State of Washington, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one or more than five years, or in the county jail not more than one year, or by a fine not exceeding two thousand dollars, or both.

Laws 1903, p. 141.

Acknowledgment, certificate of.

§ 82. Certificates of acknowledgment of an instrument acknowledged by a corporation substantially in the following form, shall be sufficient:

State of ----- }
County of ----- } ss.

On this ---- day of -----, A. D. 190—, before me personally appeared -----, to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature and Title of Officer.)

Laws 1903, p. 245.

The fact that a notary public is an officer in a corporation to which a mortgage is given would not bar him from, taking the acknowledgment.

Keene Guaranty Savings Bank v. Lawrence, 32 Wash. 572; 73 Pac. 680.

How tax to be paid on corporate stock.

§ 83. If a foreign executor, administrator or trustee shall assign any corporate stock or obligations in this
Acknowledgment, certificate of.

state standing in the name of a decedent, or in trust for a decedent, liable to such tax, the tax shall be paid to the state treasurer on or before the transfer thereof; otherwise, the corporation permitting its stock to be so transferred on its books shall be liable to pay such tax, and it is the duty of the state treasurer to enforce the payment thereof.

P. C. § 8755.

Laws 1901, p. 73.

Agent of corporation to make list.

§ 84. The president, secretary or principal accounting officer or agent of any company or association, whether incorporated or unincorporated, except as otherwise provided for in this act, shall make out and deliver to the assessor a sworn statement of its property, setting forth particularly: First, the name and location of the company or association; second, the real property of the company or association, and where situated; third, the nature and value of its personal property. The real and personal property of such company or association shall be assessed the same as other real and personal property. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he can obtain.

P. C. § 8612.

B. C. § 1676.

Ridpath v. Spokane County, 23 Wash. 436; 63 Pac. 261.

Lewistown Water Co. v. Asotin County, 24 Wash. 371; 64 Pac. 544.

Pacific Nat. Bank v. Pierce County, 20 Wash. 675; 56 Pac. 936.

Payment by corporation.

§ 85. Every such bank or other corporation shall pay to the collector, or other person authorized to collect the taxes of the state, county, city or town in which the same is located, at the time in each year when other taxes assessed in the said state, county, city or town become due, the amount of the tax so assessed in each year upon the shares in such bank or other corporation. If such tax is not so paid, the said bank or other corporation shall be liable for the same.

P. C. § 8614.

B. C. § 1678.

Tax a lien—Foreclosure.

§ 86. The shares of such banks or other corporations shall be subject to the tax paid thereon by the corporation or by the officers thereof, and the corporation and officers thereof shall have a lien on all the shares in such bank or other corporation and on all the rights and property of the shareholders in the corporate property for the payment of said taxes, which lien may be foreclosed by a similar proceeding as under chattel mortgages, and the said tax, with interest thereon at the rate of fifteen per cent per annum from the day when the tax became due, together with a reasonable attorney's fee, may be recovered as in a civil action brought by the treasurer of such county.

P. C. § 8615.

B. C. § 1679.

Who may serve summons.

§ 87. In all cases, except when service is made by publication, as hereinafter provided, the summons shall be

served by the sheriff of the county wherein the service is made or by his deputy, or by any person over twenty-one years of age, who is competent to be a witness in the action, other than the plaintiff.

P. C. § 331.

B. C. § 4874.

Washington Mill Co. v. Marks, 27 Wash. 170; 67 Pac. 565.

Manner of service.

§ 88. The summons shall be served by delivering a copy thereof as follows:

If against a railroad corporation, to any station, freight, ticket or other agent thereof within the state.

If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.

If against an insurance company, to any agent authorized by such company to solicit insurance within this state.

If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

If the suit be against a company or corporation other than those designated in the preceding subdivisions of this section, to the president or other head of the company or corporation, secretary, cashier or managing agent thereof.

If the suit be against a foreign corporation or non-resident joint stock company or association doing business within this state, to any agent, cashier or secretary thereof.

P. C. § 332.

B. C. § 4875.

Osborne v. Columbia County Farmers Alliance Corporation, 9 Wash. 666; 38 Pac. 160.

Sievers v. Dalles, etc., Co., 24 Wash. 302; 64 Pac. 539.

Zindorf v. Western American Co., 26 Wash. 695; 67 Pac. 355.

Carstens & Earles v. Leidigh, etc., Lumber Co., 18 Wash. 450; 51 Pac. 1051; 63 Am. St. 906; 39 L. R. A. 548.

Paxton v. Daniel, 1 Wash. 19; 23 Pac. 441.

Sayward v. Carlson, 1 Wash. 29; 23 Pac. 830.

Service of summons on receiver.

§ 89. That whenever any domestic or foreign corporation, which has been doing business in this state, has been placed in the hands of a receiver and the receiver is in possession of any of the property or assets of such corporation service of all process upon such corporation may be made upon the receiver thereof.

P. C. 333.

B. C. § 4875.

Service on defunct domestic corporation.

§ 90. Whenever any corporation, created by the laws of this state, or late Territory of Washington, does not have an officer in this state upon whom legal service of process can be made, an action or proceeding against such corporation may be commenced in any county where the cause of action may arise, or said corporation may have property, and service may be made upon such corporation by depositing a copy of the summons, writ, or other process, in the office of the secretary of state, which shall be taken, deemed and treated as personal service on such corporation: Provided, a copy of said summons, writ, or other process, shall be deposited in the postoffice, postage paid, directed to the secretary or other proper

officer of such corporation, at the place where the main business of such corporation is transacted, when such place of business is known to the plaintiff, and be published at least once a week for six weeks in some newspaper printed and published at the seat of government of this state, before such service shall be deemed perfect.

P. C. § 334.

B. C. § 4876.

Service by publication.

§ 91. When the defendant cannot be found within the state, of which the return of the sheriff of the county in which the action is brought, that the defendant cannot be found in the county, is prima facie evidence, and upon the filing of an affidavit of the plaintiff, his agent or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the state, or cannot be found therein, and that he has deposited a copy of the summons and complaint in the postoffice, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons, by the plaintiff or his attorney in either of the following cases:

* * * * *

When the defendant is a foreign corporation and has property within the state.

When the action is against any corporation, whether private or municipal, organized under the laws of this state and the proper officers on whom to make service do not exist or cannot be found.

P. C. § 335.

B. C. § 4877.

Information against usurpation of public functions.

§ 92. An information may be filed against any person or corporation in the following cases:

1. When any person shall usurp, intrude upon, or unlawfully hold or exercise any public office or franchise within the state, or any office in any corporation created by the authority of the state.

* * * * *

3. When several persons claim to be entitled to the same office or franchise, one information may be filed against any or all such persons in order to try their respective rights to the office or franchise.

4. When any association or number of persons shall act within this state as a corporation, without being legally incorporated.

5. Or where any corporation does, or omits acts which amount to a surrender or a forfeiture of their rights and privileges as a corporation, or where they exercise powers not conferred by law.

P. C. § 1434.

B. C. § 5780.

2 H. C. § 679.

State ex rel. Atty. Genl. v. Seattle Gas Co., 28 Wash. 488; 68 Pac. 946.

State ex rel. Mitchell v. Horan, 22 Wash. 197; 60 Pac. 135. Cited in Standard Gold Mining Co. v. Byers, 31 Wash. 100; 71 Pac. 767.

Who may file information.

§ 93. The information may be filed by the prosecuting attorney in the superior court of the proper county, upon his own relation, whenever he shall deem it his duty to do so, or shall be directed by the court or other competent

authority, or by any other person on his own relation, whenever he claims an interest in the office, franchise or corporation which is the subject of the information.

P. C. § 1435.

B. C. § 5781.

2 H. C. § 680.

Judgment of ouster of franchise or office in corporations— Costs.

§ 94. Whenever any defendant shall be found guilty of any usurpation of or intrusion into, or unlawfully exercising any office or franchise within this state, or any office in any corporation created by the authority of this state, or when any public officer thus charged shall be found guilty of having done or suffered any act which by the provisions of the law shall work a forfeiture of his office, or when any association or number of persons shall be found guilty of having acted as a corporation without having been legally incorporated, the court shall give judgment of ouster against the defendant or defendants, and exclude him or them from the office, franchise or corporate rights, and in case of corporations that the same shall be dissolved, and the court shall adjudge costs in favor of the plaintiff.

P. C. § 1443.

B. C. § 5789.

2 H. C. § 688.

Remedy against usurpers of corporate rights.

§ 95. If judgment be rendered against any corporation or against any persons claiming to be a corporation, the court may cause the costs to be collected by

executions against the persons claiming to be a corporation or by attachment against the directors or other officers of the corporation, and shall restrain the corporation, appoint a receiver of its property and effects, take an account and make a distribution thereof among the creditors. The prosecuting attorney shall immediately institute proceedings for that purpose.

P. C. § 1444.

B. C. § 5790.

2 H. C. § 689.

State ex rel. v. Superior Court, 15 Wash. 668, 701; 47 Pac. 31, 1103; 55 Am. St. 907; 37 L. R. A. 111.

Alien ownership of lands.

§ 96. The ownership of lands by aliens other than those who in good faith have declared their intention to become citizens of the United States is prohibited in this state, except where acquired by inheritance under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly or in trust for such alien shall be void: Provided, that the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition.

Art. II, Sec. 33, Const.

(Omitted by mistake from constitutional provisions.)

State ex rel. Winston v. Morrison, 18 Wash. 664; 52 Pac. 228.

State ex rel. Winston v. Hudson Land Co., 19 Wash. 85; 52 Pac. 574; 40 L. R. A. 430.

Oregon Mortgage Co. v. Carstens, 16 Wash. 165; 47 Pac. 421; 35 L. R. A. 841.

Goon Gan v. Richardson, 16 Wash. 373; 47 Pac. 762.

Brigham v. Kenyon, 76 Fed. Rep. 30.

Fraternal societies—Agent in this state.

§ 97. Each such association now doing business or hereafter admitted to do business within this state and not having its principal office within this state, and not being organized under the laws of this state, shall appoint, in writing, the commissioner of insurance and his successors in office to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it must be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such certificate, certified by said commissioner of insurance, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association.

When legal process against any such association is served upon said commissioner of insurance, he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall within two days after such service forward in the same manner a copy of the process served on him to such officer. The plaintiff in such process so

served shall pay to the commissioner of insurance, at the time of such service, a fee of \$3 which shall be recovered by him as part of the taxable costs, if he prevails in the suit. The commissioner of insurance shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made.

P. C. § 7194.

Non-resident insurance companies to file power of attorney.

§ 98. No insurance company, corporation or association organized outside of this state shall be permitted to do business in this state until such organization shall have filed with the commissioner a power of attorney which shall authorize a citizen and resident of this state to make and accept service in any proceedings in any court in this state, or the United States herein. If any attorney of any insurance organization, appointed under the provisions of this act, shall remove from the state, or become disqualified in any manner from accepting service, and if any citizen or resident of this state shall have any claim by virtue of any insurance policy issued by any company or organization not represented by attorney in this state, valid service may be made on such company or organization, and the principal agent for the Pacific Coast, enclosing a copy of the service by mail, postpaid: And provided further, that in such case no proceeding shall be had within forty days after such service on the commissioner.

P. C. § 5631.

B. C. § 2818.

Private corporations may be sued where served or where it has office.

§ 99. An action against a corporation may be brought in any county where the corporation has an office for the transaction of business, or any person resides upon whom process may be served against such corporation, unless otherwise provided in this code.

P. C. § 310.

B. C. § 4854.

2 H. C. § 160.

Appointment of receiver.

§ 100. A receiver may be appointed by the court in the following cases:

* * * * *

Where a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights.

P. C. § 575.

B. C. § 5456.

2 H. C. § 326.

EXPLANATORY NOTE.

Some important statutes, by reason of the fact that they are not of general interest, have been omitted. Among the most important of these are the statutes on eminent domain, Secs. 5102-5109 P. C. Also, Secs. 7088-7107 P. C. See, also, Secs. 8613, 8615, 8616, 8617 P. C. Sec. 8613 P. C. amended by Laws 1903, P. 123.

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PART II.

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- 102. To obtain unity of action.
- 103. To avoid casualty.
- 104. To avoid liability.
- 105. To expedite business.

To obtain capital.

§ 101. The large capital required for modern business enterprises demands co-operation on the part of the owners of capital. Corporations, as we have them, are a result of what has proved to be the most satisfactory method of obtaining this co-operation.

To obtain unity of action.

§ 102. Without incorporation, unity of action is impossible where many individuals are concerned. In a corporation, a fixed number, usually a majority, rules.

To avoid casualty.

§ 103. If a number of persons are associated in an enterprise, the death, withdrawal, or insolvency of one of them, or other contingencies, may defeat the object of the association. Under incorporation, this interference is avoided.

To avoid liability.

§ 104. An individual is liable for the full amount of his debts. A partner is liable for the full amount of the partnership debts. A stockholder in a corporation is not liable for the debts of the corporation, except in certain cases, and then only for a stipulated amount.

To expedite business.

§ 105. If property is owned by an association of persons, all contracts relating thereto must be made as individuals. A corporation has the title to the corporate property and can make contracts affecting it the same as a natural person.

CHAPTER II.

CREATION OF CORPORATIONS.

- § 106. Power to create.
- 107. Method of creation.
- 108. Corporate name.
- 109. Objects of incorporation.
- 110. Amount of capital stock and number of shares.
- 111. Time of existence.
- 112. Principal place of business.
- 113. Number and names of trustees.
- 114. Amendment of articles of incorporation.
- 115. Effect of failure to comply with statutory provisions.

Power to create.

§ 106. The power to create corporations is in the legislature.

Method of creation.

§ 107. The state constitution provides that corporations can only be formed under general laws and that they shall not be created by special act.¹

Any two or more persons may make and subscribe written articles of incorporation, in triplicate, and acknowledge the same before any officer authorized to take the acknowledgement of deeds, and file one of such arti-

§ 106.
Sec. 1.

§ 107.

¹ Sec. 1.

cles in the office of the secretary of state, one in the office of the county auditor in the county in which the principal place of business of the company is located, and retain the third in the possession of the corporation.² When the articles have been filed, the persons who shall have signed and acknowledged the same and their successors, shall be a body corporate and politic in fact and in name.³ The mere use of a corporate name without filing articles of incorporation does not constitute a corporation.⁴

Corporate name.

§ 108. The articles of incorporation shall state the name of the corporation,¹ which shall not be the same name as that of any other corporation of this state or of any foreign corporation that has complied with the laws of this state, nor so nearly resembling the name of such other corporation as to be misleading.²

Objects of incorporation.

§ 109. The articles of incorporation shall state the objects for which the corporation is formed.

§ 107.

² Sec. 24.

³ Sec. 28.

⁴ *Bash v. Culver Gold Mining Co.*, 7 Wash. 122; 34 Pac. 462.

§ 108.

¹ Sec. 24.

² Sec. 80.

§ 109.

Sec. 24.

Amount of capital stock and number of shares.

§ 110. The articles of incorporation shall state the amount of the capital stock of the corporation and the number of shares into which it is divided.

Time of existence.

§ 111. The articles of incorporation shall state the number of years for which the corporation shall exist, which shall not exceed fifty years.

Principal place of business.

§ 112. The articles of incorporation shall state the name of the city, town or locality, and county, in which the principal place of business of the corporation shall be located.

Number and names of trustees and time for which first trustees shall serve.

§ 113. The articles of incorporation shall state the number of the trustees and the names of the first trustees and the time for which these trustees shall serve which shall not be less than two months and shall not exceed six months.

Amendments to articles of incorporation.

§ 114. Amendments may be made to the articles of incorporation, by supplemental articles, executed and filed the same as the original articles.

§ 110-111-112-113-114.

Sec. 24.

Effect of failure to comply with statutory provisions.

§ 115. Unless the statute is complied with in forming a corporation, it is open to attack by the state, and the persons attempting to exercise corporate powers can be ousted from the exercise of these powers by the state.¹ Objection to the legality of the corporation, however, cannot be raised by the corporation itself or by one dealing with it to the loss or injury of other parties.² Whether a corporation is one de jure or merely de facto, it is entitled to the possession of its property until deprived thereof by a court of competent jurisdiction.³ When an action has been brought by the state to oust a corporation of its powers, the court may appoint a receiver to take charge of the property of the corporation after judgment against it,⁴ but not upon the institution of the suit.⁵

§ 115.

¹ Secs. 92 and 94.

² *Carroll v. Pacific National Bank*, 19 Wash. 639; 54 Pac. 32.

³ *State ex rel. Amsterdamsch Trustees Kantoor v. Superior Court*, 15 Wash. 68; 47 Pac. 31, 55 Am. St. Rep. 907, 37 L. R. A. 111.

⁴ Sec. 95.

⁵ Same citation as Note 3.

CHAPTER III.

PROOF OF INCORPORATION.

§ 116. Domestic corporations.

117. Foreign corporations.

Domestic corporations.

§ 116. A copy of the articles of incorporation, certified by the auditor of the county in which the articles are filed, or his deputy, or by the secretary of state, shall be received in all the courts as prima facie evidence of the facts therein stated.¹ In the absence of objection, incorporation may be shown by parol evidence.² A corporation de facto may be proved by parol evidence.³ Parol evidence, however, is not the best evidence of corporate existence.⁴ Incorporation of defendant company is admitted by filing an answer as such.⁵ A de facto corporation may be proved by showing a bona fide attempt to comply with the general laws under which a corporation can be formed, an apparent compliance with the requirements of such laws, and the exercise of corporate powers, and having established proof of a corporation de facto, its existence cannot be inquired into collaterally, but only in a direct proceeding by the state.

§ 116.

¹ Sec. 27, *Spokane & Idaho Lumber Co. v. Loy*, 21 Wash. 501; 58 Pac. 672; 60 Pac. 1119.

² *Stanford Land Co. v. Steidle*, 28 Wash. 72; 68 Pac. 178; *Yakima Nat'l Bank v. Knipe*, 6 Wash. 348, 33 Pac. 834; fol. in *Nat'l Bank of Commerce v. Galland*, 14 Wash. 502; 45 Pac. 35; *State v. Pittam*, 32 Wash. 137; 72 Pac. 1042.

³ *Stanford Land Co. v. Steidle*, supra.

⁴ *Stanford Land Co. v. Steidle*, supra.

⁵ *Frost v. Ainslie Lumber Co.*, 3 Wash. 241; 28 Pac. 354; *Sengfelder v. Mutual Life Ins. Co.*, 5 Wash. 121; 31 Pac. 428.

Foreign corporations.

§ 117. A copy of the articles of incorporation and the appointment of an agent, certified by the secretary of state as being of record in his office, constitute prima facie evidence of the organization of such corporation and of its right to transact business in this state.¹ A certified copy of the act of the legislature of a foreign state incorporating a company, and the taking of an assignment of a note and mortgage or other user, is sufficient proof of a foreign corporation.²

§ 117.

¹ Knapp, Burrell & Co. v. Strand, 4 Wash. 686; 30 Pac. 1063.

² Lancaster Savings Bank v. Elwell, 17 Wash. 446; 49 Pac. 1070.

³ See case of Fidelity Ins. etc. Co. v. Nelson, 30 Wash. 340; 70 Pac. 961; as to presumption regarding laws of a sister state.

CHAPTER IV.

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 - 120. Form of seal.
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 - 122. By whom is seal affixed.
 - 123. Effect of affixing seal.
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To sue and be sued.

§ 118. A corporation may sue or may be sued in its corporate name the same as a natural person.

To have a seal.

§ 119. A corporation may make and use a common seal and alter the same at its pleasure.

Form of seal.

§ 120. Our statute does not provide a form of seal, and hence the form of seal is determined by the corporation. It is the common practice to place on the seal the name of the corporation, the name of its principal place of business in this state, and the date of its incorporation.

Use of seal.

§ 121. The seal of the corporation is used to authenticate the contracts and agreements of the corporation, and should be affixed to its certificates of stock.

By whom is seal affixed.

§ 122. The seal must be used or affixed by or under the direction of the officer designated by the by-laws of the corporation, or in some other manner, as the person to use or affix it.

§ 118.

Sec. 28.

§ 119.

Sec. 28.

Effect of affixing seal.

§ 123. As a general rule, the effect of affixing the seal is to afford strong evidence of the validity of the document to which it is affixed.

Failure to affix seal.

§ 124. Our court in one case refused to draw any distinction between a contract executed by an officer and authenticated by the seal and one not so authenticated.

To acquire, hold or alienate property.

§ 125. A corporation has power to acquire such real or personal property as it needs to carry on the corporate business and may hold, mortgage, sell or convey the same.¹ A corporation, the majority of whose stock is held by aliens, cannot acquire lands except under mortgage or in good faith in the ordinary course of justice in the collection of debts.² A corporation cannot sell or lease its entire property when not specifically authorized to do so by its articles of incorporation,³ except by a unanimous vote of its stockholders. A corporation cannot lease, mortgage or sell its franchises or property held thereunder, free from the liabilities of the lessor, or grantee, contracted or incurred in the operation, use or enjoyment of such franchises or any of its privileges.⁴ A

§ 124.

Carrigan v. Port Crescent Improvement Co., 6 Wash. 590; 34 Pac. 148.

§ 125.

¹ Sec. 28.

² Sec. 96, Hastings v. Anacortes Packing Co., 29 Wash. 224; 69 Pac. 776.

³ Parsons v. Tacoma Smelting Co., 25 Wash. 492; 65 Pac. 765.

⁴ Sec. 8.

corporation can sell or assign franchises granted to it by a city.⁵

To appoint and remove officers and agents.

§ 126. A corporation can appoint such officers, agents or servants as the business of the corporation shall require, define their duties, prescribe their powers, fix their compensation and remove them, but no trustee shall be removed except upon a two-thirds vote of the stockholders.¹ The two-thirds vote required to remove a trustee means a two-thirds vote of the stock.² The by-laws of the corporation should fix the names of the officers of the corporation, define their duties, fix their powers, and provide for their removal. The compensation of the officers and agents of the corporation is usually fixed by the board of trustees.

To make by-laws.

§ 127. A corporation has power to make by-laws, but these by-laws must not be unreasonable, nor inconsistent with the articles of incorporation, the constitution or laws of the United States, the constitution or laws of this state. Unless the articles of incorporation confer the power of making by-laws upon the trustees, the stockholders adopt the by-laws at their stockholders' meetings. If the articles of incorporation confer the power of making by-laws upon the board of trustees, the by-laws must be adopted

§ 125.

⁵ *Commercial Electric Light & Power Co. v. Tacoma*, 17 Wash. 661; 50 Pac. 592. Cited in *State ex rel. Grinsfelder v. Spokane St. R. Co.*, 19 Wash. 532; 53 Pac. 719; 67 Am. St. 739; 41 L. R. A. 515.

§ 126.

¹ Sec. 29.

² *State ex rel. Mitchell v. Horan*, 22 Wash. 197; 60 Pac. 135.

by the board of trustees. A by-law may be abrogated by non-usage.¹

To manage its business and make regulations.

§ 128. A corporation must necessarily have the right to manage its business.¹ As the by-laws of a corporation do not provide all the necessary rules for the conduct of the members and officers of the corporation, the corporation is empowered to make regulations.² Regulations are usually made to control the conduct of the officers or employes of the corporation and are usually made in some informal manner, either by the board of trustees or some officer of the corporation.

To make contracts.

§ 129. Several of the powers of a corporation set out in the statute give a corporation the right to make contracts.¹ Owing to the importance that attaches to the right of the corporation to make contracts and the many questions that arise in the exercise of this right, we will consider some of these contracts both with respect to the persons entering into the contract, and the kind or nature of these contracts.

§ 127.

¹ Blair v. Metropolitan Savings Bank, 27 Wash. 192; 67 Pac. 609.

§ 128.

¹ Sec. 28.

² Sec. 28.

§ 129.

Sec. 28.

Particular contracts.**Contracts with strangers.**

§ 130. Contracts with strangers to the corporation stand on the same footing as contracts between natural persons who are strangers to each other. A person who has entered into a contract with a corporation cannot question the right of the corporation to make the contract.¹ The principal and sureties on a bond for the attachment of the property of a corporation are estopped to deny its corporate existence.² Although a contract of a corporation may not have been properly authorized by its board of trustees, yet when the corporation continues to receive the benefits accruing from the contract, it is estopped to deny the validity of the contract.³ When all of the stockholders of a corporation acquiesce in the execution of a mortgage on the corporate property they are estopped from setting up the invalidity of the mortgage on the ground that it was executed without corporate authority.⁴ Acts of a president and secretary of a corporation long acquiesced in by the corporation bind the corporation.⁵ A corporation is not entitled to a discount on a note, when the discount was obtained through one of its stockholders and trustees, who was also the attorney of the maker of the note.⁶

§ 130.

¹ Hall & Paulson Furniture Co. v. Wilbur, 4 Wash. 644; 30 Pac. 665.

² Seattle Crockery Co. v. Haley et al, 6 Wash. 302; 33 Pac. 650; 36 Am. St. 156.

³ Leslie v. Wilshire, 6 Wash. 282; 33 Pac. 505.

⁴ Roy & Co. v. Scott, Hartley & Co., 11 Wash. 399; 39 Pac. 679.

⁵ Miller v. Washington Southern Ry. Co., 11 Wash. 414; 39 Pac. 673.

⁶ See case of Security Savings Soc. v. Cohalan, 31 Wash. 266; 71 Pac. 1020.

Contracts with stockholders.

§ 131. A corporation and its stockholders are separate persons in the eyes of the law, hence a corporation can enter into a contract with its stockholders. A stockholder who deals with an agent of the company is presumed to know the scope of the agent's authority.¹ An agreement by a corporation that it will not engage in a certain business within a stipulated period of time does not bind the individual members of the corporation.²

Contracts with officers and trustees.

§ 132. A corporation can enter into a valid contract with its officers or trustees,¹ but as an officer or trustee of a corporation bears a trust relation to the corporation, he will not be allowed to take advantage of the corporation;² and if the vote of a trustee interested adversely to the corporation is necessary to make the contract, it can be set aside upon the complaint of a stockholder.³ The trust relation of officers and directors extends only to the corporate business and property of the company, and not to private dealings with the stockholders.⁴

Contracts in violation of law.

§ 133. A corporation cannot make a contract in violation of law.

§ 131.

¹ *Hardin v. Sweeney*, 14 Wash. 129; 44 Pac. 138.

² *Murray v. Okanogan Live Stock etc. Co.*, 12 Wash. 259; 40 Pac. 942.

§ 132.

¹ *Budd v. Walla Walla P. & P. Co.*, 2 Wash. T. 347; 7 Pac. 896.

² *Parsons v. Tacoma Smelting Co.*, 25 Wash. 492; 65 Pac. 765.

³ *Parsons v. Tacoma Smelting Co.*, *supra*; *Budd v. Walla Walla P. & P. Co.*, *supra*.

⁴ *O'Nelle v. Ternes*, 32 Wash. 528; 73 Pac. 692.

Particular contracts.**Right to borrow money and issue notes for authorized purpose.**

§ 134. A corporation can borrow money for its authorized purposes and give its note as evidence therefor and may secure the same by mortgage upon the corporate property.¹

Right to borrow money and issue notes for unauthorized purpose.

§ 135. A corporation cannot borrow money for purposes not authorized by its articles of incorporation, and notes given as evidence of an indebtedness created for such unauthorized purpose, and mortgages to secure the same, are not valid as against a non-consenting stockholder or a creditor of the corporation.¹ A note of a corporation given without consideration is valid in the hands of a *bona fide* purchaser.²

Right to become guarantors.

§ 136. A corporation may become a guarantor or surety in aid of its authorized purposes, and when it is to receive a direct and substantial benefit by so doing,¹ but otherwise it cannot enter into a contract of guaranty or suretyship to the injury of its creditors.²

§ 134.

¹ Washington Mill Co. v. Sprague Lumber Co., 19 Wash. 165; 52 Pac. 1067.

§ 135.

¹ Washington Mill Co. v. Sprague Lumber Co., 19 Wash. 165; 52 Pac. 1067.

² Stewart v. Gould, 8 Wash. 367; 36 Pac. 277.

§ 136.

¹ Wheeler, Osgood & Co. v. Everett Land Co., 14 Wash. 630; 45 Pac. 316.

² Washington Mill Co. v. Sprague Lumber Co., 19 Wash. 165; 19 Pac. 1067.

Right to subscribe for or purchase stock in other corporations.

§ 137. A corporation cannot subscribe for¹ or purchase² stock in another corporation, and expressing such power in its articles of incorporation will not give it the right to do so,³ but it may take stock of another corporation as collateral to or in payment of a debt to the corporation. It has been held that a New Jersey corporation can own stock in a Washington corporation.⁴ For the purpose of upholding a contract, a foreign corporation will be presumed to have power to purchase its own stock.⁵

Right to purchase its own stock.

§ 138. A corporation cannot purchase its own stock,¹ but it can take its own stock as collateral to or in payment of a debt from its stockholders, when the transaction is *bona fide* and for the purpose of protecting the corporation from loss.²

Contracts between stockholders prior to incorporation.

§ 139. A corporation is not liable upon contracts prior to incorporation when there is no corporate act recognizing such liability.¹

§ 137.

¹ Denny Hotel Co. v. Schram, 6 Wash. 134; 32 Pac. 1002; 36 Am. St. 130.

² Parsons v. Tacoma Smelting Co., 25 Wash. 492; 65 Pac. 765.

³ Parsons v. Tacoma Smelting Co., *supra*.

⁴ Coler v. Tacoma R. & P. Co., 53 Atl. 686.

⁵ Yeaton v. Eagle Oil & R. Co., 4 Wash. 183; 29 Pac. 1051.

§ 138.

¹ Barton v. Nix, 15 Wash. 563; 46 Pac. 1033; Tait v. Pigott, 32 Wash. 345.

² Barto v. Nix, *supra*.

§ 139.

Bash v. Culver Gold Mining Co., 7 Wash. 122; 34 Pac. 462.

In general.

Form of contract.

§ 140. Our statute does not prescribe any form for the contracts of a corporation, hence its contracts should be executed with the same formalities as the contracts of a natural person. The law, however, provides a form of acknowledgement for the use of corporations in cases where an acknowledgement is necessary.¹ The acknowledgement of an instrument made to a corporation can be made before a notary who is an officer of the corporation.²

Place of contract.

§ 141. A corporation can contract either within or without the state so long as it conforms to the laws of the state where such contract is made.

When powers can be exercised.

§ 142. A corporation can commence business when the whole amount of its capital stock has been subscribed, provided, however, that corporations engaged exclusively in loaning money on real estate or in raising money from, and loaning or repaying it to their own members, and which confine their loaning or business operations wholly to the counties of their principal place of business, respectively, and to the counties adjacent and adjoining thereto, need not have any definite amount of their capi-

§ 140.

¹ Sec. 82.

² Keene Guaranty Savings Bank v. Lawrence, 32 Wash. 572; 73 Pac. 680; Spokane & Idaho Lumber Co. v. Loy, 21 Wash. 501; 58 Pac. 672; Nixon v. Post, 13 Wash. 181; 43 Pac. 23.

³ See case of Fox v. Burlington Mnfg. Co., 7 Wash. 391; 35 Pac. 126; for effect of a contract of lease signed by all stockholders of a corporation.

tal subscribed,¹ and the mere fact that a corporation has power to do other acts than the ones mentioned in this proviso will not deprive it of the right to do business before the whole of its capital is subscribed, if it does in fact confine its business within the terms of this proviso.² A banking corporation, however, cannot begin business until three-fifths of its capital stock has been paid in,³ and the entire stock of a trust company must be paid in before it can be authorized to transact business.⁴ Although a corporation may not have complied with the statutory requirement that all of its stock must have been subscribed before it can do business as a corporation, yet where it has done business without fully and fairly complying with such prescription, the question cannot be raised, either by the corporation, or one dealing with it, to the injury or loss of other parties.⁵

Where powers can be exercised—Place of business—Removal.

§ 143. A corporation can exercise its powers at any place within the state, and at any place without the state, by conforming to the laws of the place where it attempts to do business.

The articles of incorporation fix the principal place of business of the corporation.¹ If a corporation moves its

§ 142.

¹ Sec. 23.

² *Brown v. Elwell*, 17 Wash. 442; 49 Pac. 1068.

³ Sec. 34.

⁴ *Laws* 1903, p. 367.

⁵ *Spokane v. Amsterdamsch Trustees Kantoor*, 22 Wash. 172; 60 Pac. 141.

§ 143.

¹ Sec. 28.

principal place of business into some other county in the state, it must file a certified copy of its certificate of incorporation in the office of the county auditor of the county to which its place of business is removed.² If a corporation removes its principal place of business to some other city, town or locality within the same county, it must publish a notice of such removal for at least four weeks in the newspaper published nearest to the city, town or locality from which it removes its principal place of business.³

Kind of business that can be carried on.

§ 144. A corporation must confine its business within the objects set out in its articles of incorporation.¹ A corporation, however, can do such acts as are incidental to and in aid of its principal business as set out in its articles of incorporation.²

§ 143.

² Sec. 47.

³ Sec. 47.

§ 144.

¹ *Parsons v. Tacoma Smelting Co.*, 25 Wash. 492; 65 Pac. 765.

² *Wheeler, Osgood & Co. v. Everett Land Co.*, 14 Wash. 630; 45 Pac. 316.

CHAPTER V.

ULTRA VIRES.

§ 145. Definition of ultra vires.

146. Reason for rule of ultra vires.

Rights of persons affected by an ultra vires act.

§ 147. Rights of the state.

148. Rights of the corporation itself.

149. Rights of stockholders and creditors.

150. Rights of strangers dealing with the corporation.

Definition of ultra vires.

§ 145. When a corporation does an act, not within the scope of its powers as set forth in the articles of incorporation, or contrary to law, it is called an ultra vires act. Many acts called ultra vires, such for example, as acts in excess of their authority by officers of a corporation, are not ultra vires, and should properly be treated under some other subject. Just as in the case of individuals, a corporation may do wrong or may do an ultra vires act, and rights and liabilities may grow out of this act.

Reason for the doctrine of ultra vires.

§ 146. The reason for the doctrine of ultra vires is found in the interest the state has in seeing that the corporation, like any other person, does not exceed its powers or do wrong, and the interest of the stockholders

and creditors of the corporation, or persons dealing with the corporation, in seeing that the capital of the corporation is not subjected to the risk of enterprises other than those contemplated by its articles or allowed by law.

Rights of persons affected by an ultra vires act.

Rights of the state.

§ 147. A corporation forfeits its rights by an ultra vires act, and the state can proceed against it by quo warranto to forfeit its charter or oust it from the exercise of the ultra vires act.¹

Rights of the corporation itself.

§ 148. The courts will not interfere with an ultra vires contract that is fully executed. If the ultra vires contract is fully executory, it is void. If the corporation has received and retained the benefits of an ultra vires act, it cannot set up the plea that the contract is ultra vires.¹ When a bank, through its officers, has induced a person to enter into an agreement for the purpose of defrauding him, it cannot avoid liability on the ground that the contract was ultra vires.²

§ 147.

¹ Sec. 94.

§ 148.

¹ Tootle v. First National Bank, 6 Wash. 181; 33 Pac. 345; cited in Miller v. Washington So. R. Co., 11 Wash. 414; 39 Pac. 673; Allen v. Olympia L. & P. Co., 13 Wash. 307; 43 Pac. 55; Wheeler, Osgood & Co. v. Everett Land Co., 14 Wash. 630; 45 Pac. 316; Spokane v. Amsterdamsch Trustees etc., 22 Wash. 172; 60 Pac. 141; Graton & Knight Co. v. Redelsheimer, 28 Wash. 370, 68 Pac. 879.

² Pranger v. Old Nat'l Bank, 20 Wash. 618; 56 Pac. 391.

Rights of stockholders and creditors.

§ 149. A stockholder or creditor has a right to insist that the capital of the corporation shall not be diverted to purposes outside the powers of the corporation, as defined by law and set out in the articles of incorporation.¹ An ultra vires, executory contract is voidable at the suit of a non-consenting stockholder. A stockholder may restrain other stockholders or the corporation from doing ultra vires acts. In order for a stockholder to obtain relief against an ultra vires act, he must act promptly, or he will be presumed to have acquiesced in the transaction.

Rights of strangers dealing with the corporation.

§ 150. A person who deals with a corporation must take notice of its powers, but, if the fact that an act is ultra vires was not known by the person dealing with the corporation, and the facts making it ultra vires were peculiarly within the knowledge of the corporation, the corporation will be estopped to deny its authority to make the contract. If the corporation repudiates an ultra vires contract, it must restore any money or property received under it.

§ 149.

¹ *Parsons v. Tacoma Smelting Co.*, 25 Wash. 492; 65 Pac. 765; see case of *Blair v. Metropolitan Savings Bank*, 27 Wash. 192; 67 Pac. 609.

CHAPTER VI.

CAPITAL STOCK.

Subscriptions to capital stock.

- § 151. Who can subscribe for stock.
- 152. Who can receive stock subscriptions.
- 153. Form of stock subscriptions.
- 154. Consideration for stock subscriptions.
- 155. Conditional subscriptions for stock.
- 156. Payment of stock subscriptions.
- 157. When stock subscriptions can be enforced.
- 158. Manner of enforcing stock subscriptions.

In general.

- 159. Amount of capital stock.
- 160. Number and face value of shares of capital stock.
- 161. Increase or decrease of capital stock.
- 162. The capital stock is a trust fund.
- 163. Overissued stock.

Who can subscribe for stock.

§ 151. Any person capable of making a contract can subscribe for stock in a corporation. A corporation, however, cannot subscribe for its own stock, and a Washington corporation cannot subscribe for stock in another corporation.¹

¹ Denny Hotel Co. v. Schram, 6 Wash. 134; 32 Pac. 1002, 36 Am. St. 130; followed in Denny Hotel Co. v. Gilmore, 6 Wash. 152; 32 Pac. 1004. Cited in Parsons v. Tacoma Smelting Co., 25 Wash. 492; 65 Pac. 765; Knowles v. Sandercock, 107 Cal. 643; 40 Pac. 1049; Nebraska Shirt Co. v. Horton (Neb.), 93 N. W. 225.

Who can receive subscriptions.

§ 152. The corporation can authorize any person to receive subscriptions. Subscriptions received by persons not authorized to receive them will not be binding on the corporation unless subsequently accepted or ratified by the corporation.

Form of stock subscriptions.

§ 153. Subscriptions for stock may be in any form, if they show the intention of the parties to subscribe. They need not be in writing. Even if there has been no formal subscription of any kind for the stock of a corporation it may be legally formed, and a person dealing with it cannot avoid his contract on that ground.¹ A joint subscription by trustees of a corporation for the purpose of completing the subscriptions to the capital stock is an enforceable contract.²

Consideration for stock subscriptions.

§ 154. The consideration for a subscription to stock in a corporation is the benefit to be derived from being a stockholder in the corporation. Notes, given in payment of subscriptions to the capital stock of a corporation, are based upon a valid consideration, when the subscriptions are legally enforceable.¹

§ 153.

¹ Carroll v. Pacific Nat'l Bank, 19 Wash. 639; 54 Pac. 32; followed in Spokane v. Amsterdamsch Trustees Kantoor, 22 Wash. 172; 60 Pac. 141.

² Hardin v. Mullin, 16 Wash. 647; 48 Pac. 349.

§ 154.

¹ Hardin v. Sweeney, 14 Wash. 129; 44 Pac. 138.

Conditional subscriptions for stock.

§ 155. Conditional subscriptions to the stock of corporations may be made, and payment therefor depend upon the performance of the conditions, but this can be done only at the time of the organization of the company and before such organization has been completed.¹

Payment of stock subscriptions.

§ 156. Stock may be paid for in money or in property.¹ Stock is frequently paid for in property taken at an overvaluation, and upon the failure of the corporation, the creditors attempt to recover from the stockholder the difference between the actual value of the property and the face value of the stock. The decisions of our supreme court in these cases do not seem to be very harmonious. In one case it was held that where by arrangement between the stockholders and the corporation, the stock was issued as fully paid up, when in fact it had not been paid to the amount of its full value, but had been paid for in property at a fictitious or inflated value, the court would compel a payment by the stockholder, for the benefit of the creditor who has dealt with the corporation, relying upon the asserted value of its assets, to the full amount or value of his stock.² This view is also taken in a later case.³ In another case where property was taken at a great overvaluation, it was held

§ 155.

¹ *Smith v. Hopkins*, 10 Wash. 77; 38 Pac. 854.

§ 156.

¹ *Manhattan Trust Co. v. Seattle Coal etc. Co.*, 19 Wash. 493; 53 Pac. 951; *Adamant Mnfg. Co. v. Wallace*, 16 Wash. 614; 48 Pac. 415; *Turner v. Bailey*, 12 Wash. 634; 42 Pac. 115.

² *Adamant Mnfg. Co. v. Wallace*, *supra*.

³ *Dunlap v. Rauch*, 24 Wash. 620; 64 Pac. 807.

that such an apparent overvaluation was fraudulent.⁴ Later the court in construing the same facts held this valuation not fraudulent.⁵ In another case it was held that where property was taken in payment for stock at a double valuation, and was so taken without any intention to defraud, that a judgment creditor of the corporation could not recover from such stockholder the difference between the actual value of the property and the face value of the stock.⁶

The fair rule would seem to be, that as against innocent creditors of the corporation, property accepted in payment for stock, should be appraised and taken at its true value. If creditors deal with a corporation with knowledge that stock subscriptions have been paid for in property at a fictitious valuation, they are estopped to enforce any further liability against the subscriber.⁷ The fact that property, accepted in payment of stock at its reasonable value, subsequently depreciated, will not render the stockholder liable for the difference between the property at its depreciated price and the face value of the stock.⁸

The capital stock of a mining corporation may be represented by an interest or share in a mining claim and no actual subscription to the capital stock is necessary.⁹

When can stock subscriptions be enforced.

§ 157. Under our statutes, with certain exceptions,

§ 156.

⁴ *Manhattan Trust Co. v. Seattle Coal etc. Co.*, 16 Wash. 499; 48 Pac. 333, 737.

⁵ *Manhattan Trust Co. v. Seattle Coal etc. Co.*, *supra*.

⁶ *Kroenert v. Johnson*, 19 Wash. 96; 52 Pac. 605.

⁷ *Adamant Mnfg. Co. v. Wallace*, *supra*.

⁸ *Turner v. Bailey*, *supra*.

⁹ Sec. 49.

all the capital stock must be subscribed, and a corporation cannot enforce subscriptions to its stock until all of its stock has been subscribed,¹ unless there has been a waiver of this condition by the stockholders,² and the fact that a subscriber has made a payment on his stock without knowledge of the fact that all of the stock had not been subscribed, does not waive his right to object to the authority of the corporation to enforce his subscription.³ Subscribers to the stock of a corporation cannot escape liability on the ground that part of the stock has been illegally subscribed when they have subscribed with knowledge of that fact.⁴

Manner of enforcing subscriptions.

§ 158. Subscriptions to the capital stock of a corporation may be enforced by the corporation by suit as on a contract for the payment of money.¹ The receiver of an insolvent corporation may bring a separate suit against a stockholder to recover the sum due upon his shares of stock.² The presumption is, that a corporation in bringing suit on stock subscriptions has acted regularly according to its by-laws, and if there is any by-law

§ 157.

¹ *Denny Hotel Co. v. Schram*, 6 Wash. 134; 32 Pac. 1002; 36 Am. St. 130; cited in *Denny Hotel Co. v. Gilmore*, 6 Wash. 152; 32 Pac. 1004; *Elderkin v. Peterson*, 8 Wash. 674; 36 Pac. 1089.

² *Elderkin v. Peterson*, *supra*; *Birge v. Browning*, 11 Wash. 249; 39 Pac. 643.

³ *Denny Hotel Co. v. Gilmore*, *supra*; *Birge v. Browning*, *supra*.

⁴ *Cole v. Satsop R. R. Co.*, 9 Wash. 487; 37 Pac. 700; 43 Am. St. 858.

§ 158.

¹ *Puget Sound etc. Ry. Co. v. Oullette*, 7 Wash. 265; 34 Pac. 929.

² *Elderkin v. Peterson*, 8 Wash. 674; 36 Pac. 1089.

which renders their action irregular, it is a matter of defense which should be pleaded.³

In general.

Amount of capital stock.

§159. The articles of incorporation must state the amount of the capital stock.¹ The amount is arrived at by agreement of the parties. A banking corporation, however, must have at least twenty-five thousand dollars capital stock,² a trust company twenty-five thousand dollars or more, according to the population of the city or town where located.³ A building and loan association must have an authorized capital of two million dollars.⁴ Certain corporations organized for educational, social or charitable objects do not need any capital stock.⁵

Number and face value of shares of capital stock.

§ 160. The articles of incorporation must state the number of shares into which the capital stock is divided.¹ The face value of the shares, is with few exceptions, left to agreement between the parties.² The face value of the shares of a bank or trust company,³ however, must be one hundred dollars.

§ 158.

³ Puget Sound Etc. Co. v. Oullette, *supra*.

§ 159.

¹ Sec. 24.

² Sec. 34.

³ Laws of 1903, p. 367.

⁴ Sec. 7142, Pierce's Code.

⁵ Sec. 7083.

§ 160.

¹ Sec. 24.

² Sec. 34.

³ Laws of 1903, p. 367.

Increase or decrease of the capital stock.

§ 161. The capital stock may be increased or decreased by complying with certain statutory provisions.¹ The capital cannot be decreased by a misuse of the corporate assets.²

The capital stock is a trust fund.

§ 162. The capital stock is a trust fund for the benefit of the creditors of the corporation.¹ The creditors have a right to insist that the capital stock shall be kept intact. Unpaid subscriptions to the capital stock are assets of the corporation and a trust fund for the benefit of all the creditors of the corporation.² A stockholder who has acquired all the stock of the corporation cannot transfer or dispose of the corporate property to secure an individual indebtedness to the prejudice of the corporate creditors.³ The corporation cannot use the corporate funds to purchase stock from its stockholders.⁴

§ 161.

¹ Secs. 42, 43 and 44, where procedure is fully set out; see also Sec. 37.

² *Tait v. Pigott*, 32 Wash. 344; 73 Pac. 364.

§ 162.

¹ *Conover v. Hull*, 10 Wash. 673; 39 Pac. 166; 45 Am. St. 810; cited in *Compton v. Schwabacher*, 15 Wash. 306; 46 Pac. 338; *Biddle Pur. Co. v. Port Townsend Steel Co.*, 16 Wash. 681; 48 Pac. 407; *Burrell v. Bennett*, 20 Wash. 644; 56 Pac. 375; *State ex rel. Strohl v. Superior Ct.*, 20 Wash. 545; 56 Pac. 35; 45 L. R. A. 177; *Tait v. Pigott*, 32 Wash. 344; 23 Pac. 364.

² *Burch v. Taylor*, 1 Wash. 245; 24 Pac. 438.

³ *Stewart v. Gould*, 8 Wash. 367; 36 Pac. 277.

⁴ *Tait v. Pigott*, *supra*.

⁵ See Sec. 222, *Rights of Creditors of Insolvent Corporations*.

Overissued stock.

§ 163. Stock issued in excess of the amount fixed by the articles of incorporation is void even in the hands of an innocent purchaser. The bona fide holder of over-issued stock, issued by the proper officers of the corporation, may sue the corporation and recover the damages suffered.

CHAPTER VII.

STOCKHOLDERS.

- § 164. Who can be stockholders.
- 165. How to become stockholders.
- 166. Who are stockholders.

Rights of stockholders.

- § 167. Right to participate in management.
- 168. Right to inspect books and records and remedy
for refusal of this right.
- 169. Right to dividends.
- 170. Liabilities of stockholders.

Who can be stockholders.

§ 164. Any person capable of contracting, can become a stockholder in a corporation, provided, however, that a corporation cannot purchase or hold its own stock or purchase or hold stock in another corporation, except under certain circumstances.¹ At least one trustee, and consequently one stockholder, must be a resident of the State of Washington.² If the majority of the stockholders of a corporation are aliens, a conveyance of real estate to the corporation may be avoided by the state.³

§ 164.

¹ See Secs. 137 and 138.

² Sec. 29.

³ State ex rel. Winston v. Hudson Land Co., 19 Wash. 85; 52 Pac. 574; 40 L. R. A. 430; see Hastings v. Anacortes Packing Co., 29 Wash. 224; 69 Pac. 776.

How to become stockholders.

§ 165. If a corporation has a capital stock, membership is attained by the purchase of shares of stock. If the corporation has no capital stock, membership is attained by conforming to the rules laid down in its articles of incorporation and by-laws.

Who are stockholders.

§ 166. Any person owning a share of stock is a stockholder. In many cases, however, the courts have found great difficulty in determining who are liable as stockholders. A subscriber to the capital stock of a corporation whose subscription is unpaid, but who has assigned his stock with the consent of the corporation, is not a stockholder.¹ A person who holds stock in a corporation, under an agreement that if discharged from his employment by the corporation, he can return the stock and get the money paid for it, is a stockholder.² A stockholder who has pledged his stock is still a stockholder and entitled to vote his stock.³ A person who has transferred his stock, although such stock is not registered on the books of the company, is not a stockholder so that his stock can be sold on execution,⁴ while he would be a stockholder for the purpose of voting the stock.⁵ A person is

§ 166.

¹ *Stewart v. Walla Print. & Pub. Co.*, 1 Wash. 521; 20 Pac. 605.

² *Yeaton v. Eagle Oil etc. Co.*, 4 Wash. 183; 29 Pac. 1051.

³ *Spokane v. Amsterdamsch etc.*, 22 Wash. 172; 60 Pac. 141.

⁴ *Port Townsend Nat'l Bank v. Port Townsend Gas and Fuel Co.*, 6 Wash. 597; 34 Pac. 155; cited in *Mapleton Bank v. Standrod (Idaho)*, 71 Pac. 121.

⁵ Sec. 33.

not a stockholder in a company when he has assigned his stock to another for the purpose of selling the same and this person has actually sold the stock to an innocent purchaser.⁶

Rights of stockholders.

Right to participate in management.

§ 167. A stockholder has the right to attend the meetings of the stockholders and participate in the management, and to see that the corporate property is not diverted from the objects of the corporation as set out in the articles of incorporation.¹ Where the rights of stockholder are prescribed by statute, they cannot be contravened by the enactment of corporation by-laws.²

Right to inspect books and records and remedy for refusal of this right.

§ 168. A stockholder has the right, at reasonable times, to examine and inspect the books and records of the corporation,¹ when his purpose is to inform himself of the corporate affairs, and upon refusal, he may enforce this right by mandamus.² The presumption, when a stockholder applies for an inspection of the corporate books

§ 166.

⁶ Jones v. Western Mnfg. Co., 32 Wash. 375; 73 Pac. 359.

⁷ See the case of Jones v. Western Mnfg. Co., 27 Wash. 136; 67 Pac. 586, on evidence of ownership.

⁸ See case of Hardin v. White Swan Mining & Milling Co., 26 Wash. 583; 67 Pac. 236.

§ 167.

¹ Parsons v. Tacoma Smelting Co., 25 Wash. 492; 65 Pac. 765.

² Trowbridge v. Hamilton et al., 18 Wash. 686; 52 Pac. 328.

§ 168.

¹ Sec. 40; State ex rel. Weinberg v. Pacific Brewing & Malting Co., 21 Wash. 451; 58 Pac. 584; 47 L. R. A. 208.

² State ex rel. Weinberg v. Pacific Brewing etc. Co., *supra*.

and accounts, is that the inspection is sought in the interests of the corporation, and, when the refusal is based on the ground that the inspection is sought for purposes antagonistic to the corporation, the burden is upon the officers refusing inspection to establish that the stockholder is not proceeding in good faith.³

Right to dividends.

§ 169. A stockholder has a right to the dividends earned by his stock. The matter of declaring a dividend rests in the sound discretion of the board of trustees. The trustees, however, cannot in bad faith deprive the stockholder of the dividends on his stock. Dividends can be declared only from the net profits arising out of the business of the corporation.¹

Liabilities of stockholders.

§ 170. A stockholder of a corporation is personally liable to the creditors of a corporation only to the amount remaining unpaid upon his subscription to the capital stock,¹ except in the case of a banking corporation or a trust company. In a banking corporation, a stockholder is individually liable, equally and ratably, and not one for the other, for all contracts, debts, and engagements of such corporation accruing while they remain such a stockholder, to the extent of their stock therein at the par value thereof, in addition to the amount invested in such

§ 168.

³ State ex rel. Weinberg v. Pacific Brewing etc. Co., supra; cited in Duval v. Miller, 94 Md. 697; 51 Atl. 573.

§ 169.

¹ Sec. 37.

§ 170.

¹ Sec. 38.

shares.² This liability is secondary³ and not a primary liability, and creditors must first attempt to enforce their claims against the corporation,⁴ and it can be enforced only after exhausting corporate assets.⁵ In a trust company, the stockholders in case of default in the payment of any debt or liability contracted by such corporation are individually responsible, equally and ratably, for the then existing debts of the corporation, not exceeding, however, the par value of their respective shares of stock held by them, at the time of the default.⁶ If any insolvent bank has done other kinds of business than a banking business, the proceeds resulting from the double liability of the stockholders should be applied to the bank's liability.⁷

§ 170.

² Sec. 38; *Shuey v. Holmes*, 21 Wash. 223; 57 Pac. 818.

³ *Wilson v. Book*, 13 Wash. 676; 43 Pac. 939.

⁴ *Wilson v. Book*, *supra*, cited, *Shuey v. Adair*, 24 Wash. 378; 64 Pac. 536; *Barton Nat'l Bank v. Atkins*, 72 Vt. 33; 47 Atl. 179; *Howarth v. Angle*, 55 N. Y. Supp. 1109; *McLaughlin v. O'Neill*, 7 Wyo. 215; 51 Pac. 246-247.

⁵ *Wilson v. Book*, *supra*; *Farmers L. & T. Co. v. Funk*, 49 Neb. 364-366-367; in *Mallon v. Hyde*, 76 Fed. 388, held rule not applicable in case of fraudulent concealment.

⁶ *Laws of 1903*, p. 367.

⁷ *Kiggins v. Munday*, 19 Wash. 233; 52 Pac. 855.

CHAPTER VIII.

TRANSFER OR PLEDGE OF SHARES.

- § 171. Right to transfer shares.
- 172. Manner of transferring shares.
- 173. Effect of a transfer of shares.
 - 174. As regards a stockholder's creditors.
 - 175. As regards dividends.
 - 176. As regards the corporation and the corporation's creditors.
- 177. Transfers in violation of a trust.
- 178. Remedy for refusal of corporation to transfer shares.
- 179. Contracts for sale of shares.
- 180. Pledge of shares—Right to pledge shares.
- 181. Effect of a pledge of shares.

Right to transfer shares.

§ 171. The stock of a corporation is personal property and is transferable.¹

Manner of transferring shares.

§ 172. Stock in a corporation must be transferred in the manner prescribed by the by-laws of the corporation.¹ No transfer of stock shall be valid except between the parties thereto, until the same shall have been entered upon the books of the corporation so as to show the names of the parties, by and to whom transferred, the number and designation of the shares, and the date of the trans-

§ 171.

¹ Sec. 33.

§ 172.

¹ Sec. 33.

fer.² Although a transfer of shares of stock in a corporation is not registered, it passes a good title against a creditor of the transferrer.³

Effect of a transfer of shares.

§ 173. The effect of a transfer of stock in a corporation, as regards the payment of assessments or unpaid installments upon the stock, is to substitute the transferee to the liability of paying future assessments and to release the transferrer.¹ This, however, would not be the case unless the transfer was made in good faith.² Assessments or installments due and unpaid when the transfer was made must be paid by the transferrer. A stockholder who has transferred his stock and thereafter executed his note to the corporation and resumed the payment of the stock is again liable for the payment of the stock.³

As regards the stockholder's creditors.

§ 174. A transfer of stock in good faith is good, even if not registered, as against the creditors of the stockholder.¹

§ 172.

² Sec. 33.

³ Port Townsend Nat'l Bank v. Port Townsend Gas & Fuel Co., 6 Wash. 597; 34 Pac. 155, cited in Mapleton Bank v. Standrod (Idaho), 71 Pac. 121.

§ 173.

¹ Stewart v. Walla Walla etc. Pub. Co., 1 Wash. 521; 20 Pac. 605.

² Stewart v. Walla Walla etc. Pub. Co., *supra*.

³ Z. C. Miles Co. v. Robertson, 5 Wash. 352; 31 Pac. 970.

§ 174.

¹ Port Townsend Nat'l Bank v. Port Townsend Gas & Fuel Co., 6 Wash. 597; 34 Pac. 155; cited in Mapleton Bank v. Standrod (Idaho), 71 Pac. 121.

As regards dividends.

§ 175. Earnings not yet declared as dividends, pass with a transfer of stock. Dividends earned and declared do not pass by a transfer of stock although payable after the transfer. The right to the dividends can, of course, be fixed by agreement between the parties.

As regards the corporation or the corporation's creditors.

§ 176. A transfer of stock, if completed and registered, is good as against the corporation or the corporation's creditors, but, if not registered, is not good as against the corporation or the corporation's creditors.¹ The statutory provisions requiring the registration of transfers is for the benefit of the corporation or its creditors.² A transfer of stock, even if irregular, if accepted and acquiesced in by the corporation, is binding upon it.³

Transfers in violation of a trust.

§ 177. A purchaser of stock who has purchased from one who holds the stock in trust, and who has transferred the stock in violation of his trust, will take a good title if he has no actual or constructive notice of the trust.

Remedy for refusal of corporation to transfer shares.

§ 178. If a corporation wrongfully refuses to register

§ 176.

¹ Port Townsend National Bank v. Port Townsend Gas & Fuel Co., 6 Wash. 597-600; 34 Pac. 155.

² Port Townsend National Bank v. Port Townsend Gas & Fuel Co., supra; Lacaff v. Dutch Miller Mining etc. Co., 31 Wash. 566; 72 Pac. 122.

³ Stewart v. Walla Walla etc. Pub. Co., 1 Wash. 521; 20 Pac. 605.

a transfer of shares on its books and to issue a new certificate, the stockholder can sue the corporation and recover damages, or he can sue the person that prevents the corporation from registering the transfer and recover damages, or he can bring a suit in equity and compel the corporation to register the transfer and issue a new certificate. An action for damages for the value of stock in a corporation, based on a refusal to transfer, cannot be maintained by a stockholder against another corporation which has succeeded to all the property, rights and interests of the corporation which issued the stock.¹

Contracts for the sale of shares.

§ 179. A contract can be made for the sale of shares of stock in a corporation. Such contracts are governed by the same principles as other contracts for the sale of personal property.

Pledge of shares—Right to pledge.

§ 180. Any stockholder may pledge his stock by a delivery of the certificate or other evidence of his interest.¹

§ 178.

¹ Huggins v. Milwaukee Brewing Co., 10 Wash. 579; 39 Pac. 152.

² See case of Lacaff v. Dutch Miller Mining & Smelting Co., 31 Wash. 566; 72 Pac. 122; an action by an assignee of stock to compel issuance of stock to him.

§ 180.

¹ Sec. 36, Port Townsend Nat'l Bank v. Port Townsend Gas & Fuel Co., 6 Wash. 597; 34 Pac. 155; American Bonding & Trust Co. v. Pacific Brewing etc. Co., 33 Wash. 043; 74 Pac. 826.

Effect of a pledge of shares.

§ 181. The effect of a pledge of shares is to give the person to whom the shares are pledged a lien upon the stock.¹ The pledgee's interest cannot be divested by judicial sale against the owner.² The owner's interest can be sold subject to the interest of the pledgee.³ The corporation is bound to take notice that its shares may be pledged, and if the corporation transfers the shares or pays money on the shares to an owner who has pledged his stock, without a delivery of the stock certificates, it is liable in damages.⁴ The owner of pledged stock may vote the same at meetings of the stockholders of the corporation,⁵ and the vote of the owner will bind the pledgee.⁶ A pledgee cannot have the stock transferred to him on the books of the corporation without first obtaining title to the stock.⁷

§ 181.

¹ Dearborn v. Washington Savings Bank, 18 Wash. 8; 50 Pac. 575.

² Dearborn v. Washington Savings Bank, *supra*; Port Townsend Nat'l Bank v. Port Townsend Gas & Fuel Co., 6 Wash. 597; 34 Pac. 155.

³ Port Townsend Nat'l Bank v. Port Townsend Gas & Fuel Co., *supra*; Hardin v. White Swan Mining etc. Co., 26 Wash. 583; 67 Pac. 236.

⁴ Brown v. Union Savings Ass'n, 28 Wash. 657; 69 Pac. 383.

⁵ Sec. 36.

⁶ Spokane v. Amsterdamsch, 22 Wash. 172; 60 Pac. 141; quoted in Corcoran v. Sonota Min. & Mill Co. (Idaho), 71 Pac. 130, cited in Dearborn v. Wash. Sav. Bank, 18 Wash. 8; 50 Pac. 575; Mapleton Bank v. Standrod (Idaho), 71 Pac. 121.

⁷ American Bonding and Trust Co. v. Pacific Brewing & Malting Co., 33 Wash. 043; 74 Pac. 826.

CHAPTER IX.

CORPORATE MEETINGS AND ELECTIONS.

Stockholders' meetings.

- § 182. Notice of stockholders' meetings.
- 183. Regular or fixed meetings.
- 184. Special meetings.
- 185. Time and place of meeting.
- 186. Qualifications of voters.
- 187. Quorum.
- 188. Elections—Manner of voting.
- 189. Records of stockholders' meetings.

Trustees' meetings.

- § 190. Notice of trustees' meetings.
- 191. First meeting.
- 192. Regular meetings.
- 193. Special meetings.
- 194. Time and place of meeting.
- 195. Qualifications of trustees.
- 196. Manner of voting.
- 197. Quorum.
- 198. Election of officers.
- 199. Record of trustees' meetings.

Stockholders' meetings.

Notice of stockholders' meetings.

§ 182. If all the stockholders are present at any meeting, whether regular or special, no informality or want of notice will invalidate the proceedings.

Regular or fixed meetings.

§ 183. No notice is necessary for meetings, the time and place of which is fixed by the by-laws of the corporation, unless the by-laws provide that notice must be given. If the time and place is not fixed, notice of a meeting must be given to every stockholder or member entitled to vote.

Special meetings.

§ 184. Notice must be given of all special meetings, and the matters to come before the meeting must be specified in the notice and only such matters as are mentioned in the notice can be acted on at the meeting. If no notice is provided by the by-laws of the corporation, notice must be given personally, a reasonable length of time before the meeting, and must specify the time and place of meeting. If the by-laws provide for a notice, this notice must be given. Proof of notice need not appear upon the minutes but may be supplied otherwise and until the contrary appears the meeting will be presumed regular.¹

Time and place of meeting.

§ 185. The stockholders' meetings must be held at the time and place fixed by the by-laws or stated in the notice. The time must be reasonable, and the place of meeting must be set where it will not cause stockholders great inconvenience. The meeting must be held within the state.¹

§ 184.

¹ Budd v. Walla Walla P. & P. Co., 2 Wash. T. 347; 7 Pac. 896.

§ 185.

¹ Sec. 29.

Qualifications of voters.

§ 186. The stock-book of the corporation determines who are entitled to vote.¹ Transfers of stock are not good against the corporation unless recorded, and the corporation cannot be compelled to recognize a stockholder unless the transfer is recorded.² Any person who holds stock as executor, administrator, guardian or trustee, shall represent such stock at all meetings of the company and may vote accordingly as a stockholder.³ A stockholder who has pledged his stock by a delivery of his stock or in any other manner may vote the same.⁴

Quorum.

§ 187. The statute does not fix the number of stockholders necessary for a quorum, and unless the number is fixed by the by-laws of the corporation, any two stockholders can hold a valid stockholders' meeting. If the by-laws fix the number of stockholders necessary for a quorum or the amount of stock that must be represented to make a quorum that number or amount of stock must be present in order to transact business.

Elections—Manner of voting.

§ 188. The trustees of the corporation, after the trustees first elected, shall be elected by the stockholders.¹ The election must be held within the state.² All elections

§ 186.

¹ Sec. 33.

² Sec. 33.

³ Sec. 35.

⁴ Sec. 36.

§ 188.

¹ Sec. 29.

² Sec. 29.

must be by ballot, and the person or persons receiving the greatest number of votes shall be declared trustee or trustees.³ The stock may be voted either in person or by proxy.⁴ In the absence of any provision in the by-laws, a stockholder has one vote for each share of stock. Our statute does not provide for cumulative voting, but the by-laws of the corporation can provide for cumulative voting. The by-laws may limit the stockholder to a single vote or one vote for every full share of paid up stock, or its equivalent in assessable stock, disregarding the number of shares he may own.⁵

Record of stockholders' meetings.

§ 189. The minutes of stockholder's meetings, if properly authenticated, are the best evidence of the proceedings. The proceedings of a stockholder's meeting may, however, be proved by other evidence or even by parol evidence.

Trustees' meetings.

Notice of trustees' meetings.

§ 190. If all the trustees are present at any meeting, the failure to give notice of the meeting will not invalidate the proceedings.

First meeting.

§ 191. The first meeting of the trustees shall be called by a notice signed by one or more persons named as trustees in their articles, setting forth the time and place of meeting, which notice shall be delivered personally to

§ 188.

³ Sec. 29.

⁴ Sec. 29.

⁵ Sec. 29.

each trustee, or published at least twenty days in some newspaper in the county in which the principal place of business of the corporation is located, or if no newspaper is published in that county, then in some newspaper nearest thereto in the state.¹

Regular meetings.

§ 192. No notice is ordinarily necessary for meetings fixed by the by-laws of the corporation. It is good practice, and it has been held in some states, that in case business of unusual or great importance is to come before the meeting it is necessary to give notice of this business.

Special meetings.

§ 193. A notice must be given of all special meetings of the board of trustees. If the by-laws provide a manner of giving notice, either this notice or a personal notice must be given, a reasonable length of time before the meeting, and the notice must inform the trustees of the business to come before the board.

Time and place of meeting.

§ 194. The trustees' meetings are usually held at the principal office of the company, and the regular times of meeting are usually fixed by the by-laws. The meetings must be held at the time and place fixed by the by-laws or in the notice of the meeting. The time of meeting must be reasonable, and the place reasonably convenient for the trustees. Our statute does not provide for or authorize the holding of trustees' meetings outside of the state.

§ 191.

¹ Sec. 32.

Probably a valid meeting of the trustees could be held outside the state to authorize contracts or appoint agents or do such acts as agents of a corporation can do, but a valid meeting could probably not be held to pass by-laws, or elect officers, or to make calls or assessments or to do other like corporate acts.

Qualifications of trustees.

§ 195. Our statute requires the trustees to be elected from the stockholders of the corporation,¹ and since transfers of stock are not good as against the corporation unless registered,² only such persons are eligible for election as trustees as are stockholders on the books of the corporation. If a trustee transfers his stock and the transfer is registered he ceases to be a trustee without any act on the part of the corporation. At least one trustee must be a resident of the state.³ Our statute requires the trustees of a corporation to take an oath of office before entering on the duties of their office, this oath to be in the form provided by the laws of this state. No form of oath has been provided, so it has become common practice to have the trustees take an oath to faithfully and conscientiously perform their duties and to file the oath of office with the records of the corporation. Since the laws of the state have failed to provide a form of oath probably the oath is not a necessary qualification for a trustee. A trustee is not qualified to act on matters in which he is personally interested.⁴

§ 195.

¹ Sec. 29.

² Sec. 33.

³ Sec. 29.

⁴ *Budd v. Walla Walla P. & P. Co.*, 2 Wash. T. 347; 7 Pac. 896; *Parsons v. Tacoma Smelting Co.*, 25 Wash. 492; 65 Pac. 765.

Manner of voting.

§ 196. The trustees are not required to vote by ballot and unless the by-laws of the corporation require a vote by ballot, the trustees can vote in any manner they see fit, in order to arrive at the will of the majority of the board. The general rule is that trustees must act as a board, and separate action by all of the trustees of a corporation, not meeting as a board of trustees, is not the action of the board or binding upon the corporation, unless subsequently ratified. It has been held in our state, however, that a bond executed without the direct authority of a resolution by the board of trustees will not invalidate the bond where a majority of the trustees were in consultation about it prior to its execution and consented thereto.¹ Trustees must act in person and cannot vote by proxy.

Quorum.

§ 197. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.¹ It was held in a case where trustees of a corporation were elected by a minority of the trustees, to fill vacancies in their board, that the persons elected were *de facto* officers, and that having entered peacefully into the possession of office, their acts as such trustees, within the scope of the corporation's ordinary business could not be questioned by

§ 196.

¹ Wheeler, Osgood & Co. v. Everett Land Co., 14 Wash. 630; 45 Pac. 316.

§ 197.

¹ Sec. 31.

strangers.² The stockholders, however, would have the right to question the validity of such an election.³

Election of officers.

§ 198. The names and titles of the officers of a corporation are fixed by the by-laws. These officers are usually elected by the board of trustees at its first meeting. If the trustees are not elected on the date set by the by-laws, the trustees hold office until their successors are elected and qualified.¹ Vacancies occurring in the board of trustees by reason of the death or resignation of a trustee, or other cause, except the removal of a trustee by the stockholders, shall be filled by the board of trustees.²

Records of trustees' meetings.

§ 199. When it is essential to show the proceedings of the board of trustees of a corporation, it is competent to prove all that was said and done in addition to what is disclosed by the minutes of the board.¹ A general understanding between the boards of two corpora-

§ 197.

² Baggot v. Turner, 21 Wash. 339; 58 Pac. 212.

³ Baggot v. Turner, *supra*.

§ 198.

¹ Sec. 30.

² Sec. 29.

§ 199.

¹ Tibbals v. Mount Olympus Water Co., 10 Wash. 329; 38 Pac. 1120; 16 Wash. 480; 48 Pac. 236.

tions, with reference to certain transactions between them, followed by a course of dealing in pursuance thereof, of which each board has knowledge, is sufficient authority for such transactions, although no resolutions granting that authority are passed by the respective boards.²

§ 199.

² *Roberts v. Washington Nat'l Bank*, 11 Wash. 550; 40 Pac. 225; *Roberts v. Washington Water Power Co.*, 19 Wash. 392; 53 Pac. 664, as to presumption arising from minutes of meeting.

CHAPTER X.

OFFICERS AND AGENTS OF CORPORATIONS.

- § 200. Election, appointment and qualification of officers.
- 201. Term of office—Removal from office.
- 202. Compensation of officers and agents.
- 203. Powers of officers.
 - 204. Trustees.
 - 205. President.
 - 206. Vice-President.
 - 207. Secretary.
 - 208. Treasurer.
 - 209. General manager.
- 210. Liability of officers for mismanagement.

Election, appointment and qualification of officers and agents.

§ 200. The trustees of a corporation, except in the case of vacancies, must be elected by the stockholders. A vacancy in the board of trustees, except when caused by the removal of a trustee, must be filled by the board of trustees. Other officers and agents of the corporation are usually elected by the board of trustees or appointed by the managing agents of the corporation. The qualifications of trustees have been heretofore given. The only qualifications for officers and agents of the corporation are those provided by the by-laws. The president is usually required to be a trustee, and in case he is not a trustee, while he may preside over the meetings of the board of trustees, he cannot vote.

Term of office—Removal from office.

§ 201. The first trustees of the corporation must hold office for a term of two months, and cannot hold office for a term exceeding six months.¹ Trustees once elected hold office until their successors are elected and qualified.² The statute does not fix the term of office of the trustees and other officers, and if no term is fixed, the trustees hold office at the will of the stockholders, and the other officers at the will of the board of trustees, or other person or persons appointing them. An officer whose term of office is fixed by the by-laws of the corporation cannot be removed without cause.

If an officer or agent has a special contract for services with the corporation he may nevertheless be removed, but the corporation may render itself liable in damages. The term of office of an officer or agent of the corporation need not be limited to one year because the trustees are elected annually. Officers, once elected, hold office until their successors are elected and qualified.

Compensation of officers and agents.

§ 202. Unless the by-laws of the corporation provide for the compensation of the trustees of a corporation, the trustees are not entitled to any compensation for services within the line of their duties as trustees,¹ and there must be some other authority than the action of the trustees

§ 201.

¹ Sec. 24.² Sec. 30.

§ 202.

¹ *Burns v. Commencement Bay Land & Imp. Co.*, 4 Wash. 558; 30 Pac. 668, 709.

themselves for the payment of such compensation.² If a trustee performs duties outside of and in addition to his duties as a trustee, it is competent for the trustees to pay him a compensation for the performance of those duties.³ The compensation of other officers and agents of a corporation may be fixed by the by-laws of the corporation, but is usually fixed by the trustees of the corporation, except in the case of minor officers and agents, the compensation of which officers or agents is usually fixed by their superiors in office or some managing officer of the corporation.

Powers of officers generally.

§ 203. The by-laws of a corporation usually outline the duties of the officers of the corporation. In the practical working of a corporation, the actual powers are usually centered in one or more officers, and in order to determine whether or not, in a given case, an officer had authority to do an act it is necessary to look carefully into all the circumstances of the case. The fact that an officer exceeded his powers as defined by the by-laws, or performed acts not formally authorized by the board of trustees, does not necessarily prove that he did not have the power to perform the acts.¹

Trustees.

§ 204. The corporate powers are exercised by the

§ 202.

² Burns v. Commencement Bay etc. Co., supra.

³ Burns v. Commencement Bay etc. Co., supra.

§ 203.

¹ Anderson v. Wallace Lumber & Mnfg. Co., 30 Wash. 147; 70 Pac. 247; cited in West Seattle Land & Imp. Co. v. Novelty Mill Co., 31 Wash. 435; 72 Pac. 71.

board of trustees.¹ The trustees have the power to do what is necessary or proper to carry out the express or implied objects and purposes of the corporation. The trustees cannot do acts not within the express or implied objects of the corporation, as set out in the articles of incorporation,² or do acts within the objects of the corporation as set out in its articles if such acts are not authorized by statute.³ A board of trustees has capacity to transact the corporate business when it has been recognized by the corporation and the public, and the trustees are at least *de facto* officers.⁴ Contracts made by a trustee of a corporation may be enforced by it in its own name.⁵

President.

§ 205. The powers of the president of the corporation are fixed by the by-laws of the corporation or by the custom of the corporation. Usually the president presides at all meetings of the stockholders and of the board of trustees, signs all contracts and other documents of the corporation, and signs the stock certificates of the corporation. The corporation will be bound by the unauthorized acts of the president when it has knowledge

§ 204.

¹ Sec. 29.

² *Parsons v. Tacoma Smelting Co.*, 25 Wash. 492; 65 Pac. 765.

³ *Spokane v. Amsterdamsch Trustees etc.*, 22 Wash. 172; 60 Pac. 141;
Parsons v. Tacoma Smelting Co., *supra*.

⁴ *Spokane v. Amsterdamsch Trustees etc.*, *supra*.

⁵ *Moody v. Noyes*, 15 Wash. 128; 45 Pac. 732.

of similar acts and frequently ratifies or accepts them,¹ but the corporation will not be bound by the unauthorized acts of the president, although the president has frequently performed similar acts, if the corporation had no knowledge of these acts.² The fact that the president of a corporation acted both as chairman and secretary of a meeting of the board of trustees will not of itself invalidate its proceedings.³ A mortgage executed by one corporation to another will not be deemed fraudulent solely because of the fact that the same individual is president of both corporations.⁴ A corporation cannot plead want of authority in its president and secretary to enter into a contract where it has received the benefits of the contract.⁵ Where a corporation has not authorized the rescission of a contract entered into by its president in its behalf, such president has no authority to rescind, even though the contract may have been made by him under a general authority to enter into such contract without submitting the same to the board of trustees; and especially is this so where his own private interest would be advanced by the rescission at the expense of his principal.⁶

§ 205.

¹ *Duggan v. Pacific Boom Co.*, 6 Wash. 593; 34 Pac. 157; 36 Am. St. 182; followed in *Miller v. Wash. So. R. Co.*, 11 Wash. 414; 39 Pac. 673; this case questions and distinguishes the holding in *Elwell v. Puget Sound etc. R. Co.*, 7 Wash. 487; 35 Pac. 376; cited in *Helena Nat. Bank v. Rocky Mt. Tel. Co.*, 20 Mont. 379; 51 Pac. 833.

² *Elwell v. Puget Sound etc. R. Co.*, *supra*.

³ *Budd et al. v. Walla Walla P. & P. Co.*, 2 Wash. T. 347; 7 Pac. 896.

⁴ *Roy & Co. v. Scott, Hartley & Co.*, 11 Wash. 399; 39 Pac. 679.

⁵ *West Seattle Land & Imp. Co. v. Novelty Mill Co.*, 31 Wash. 435; 72 Pac. 71.

⁶ *Wallace v. Oceanic Packing Co.*, 25 Wash. 143; 64 Pac. 938; *Duggan v. Pacific Boom Co.*, *supra*.

⁷ See case of *Seal v. Puget Sound etc. Co.*, 5 Wash. 422; 32 Pac. 214.

⁸ See cases cited under Secs. 206 and 208.

Vice-President.

§ 206. The powers of the vice-president are fixed by the by-laws of the corporation or the custom of the corporation. In addition to his other duties, it is usual for the vice president to perform the duties of the president in the absence of the president or in case of the inability of the president to act. Frequently the vice-president has no duties other than to act in case of the absence or inability of the president. The acts of counsel for a corporation appointed by a vice-president thereof are binding on a corporation, where the president had resigned and left the country, and the vice-president was the acting president.¹

Secretary.

§ 207. The secretary's duties are defined by the by-laws or the practice of the corporation. The secretary is usually made the custodian of the corporation seal, and usually affixes the seal to the corporate documents. He usually keeps the records of the corporation and takes and records the minutes of the meetings of the stockholders and of the board of trustees. He usually signs all legal documents of the company and the stock certificates of the company. The secretary has such powers as the corporation with its knowledge allows the secretary to exercise, and the corporation will be estopped from claiming that the secretary's acts are unauthorized when it has knowledge of frequent similar acts and has ratified or ac-

§ 206.

¹ Fernald v. Spokane & B. C. Tel. & Tel. Co., 31 Wash. 672; 72 Pac. 462.

cepted them.¹ Where the secretary of a corporation, in sole charge of its business, makes a fraudulent sale of its property, and the corporation made no move to disaffirm the conveyance for two years after the discovery of the fraud, it was held estopped to deny the authority of such officer.²

Treasurer.

§ 208. The treasurer's powers are fixed by the by-laws or the custom of the corporation. It is usually the treasurer's duties to receive and safely keep the funds of the corporation and to disburse them for the corporation. The cashiers of banks or trust companies usually have greater powers than the treasurers of other corporations, and are usually considered to have implied authority to do all acts within the scope of the business of the corporation.

A note in the hands of a third party which was made to a corporation, indorsed by a corporation through its treasurer, is sufficient to establish prima facie that such person is the owner and holder of such note.¹

General manager.

§ 209. The powers of the general manager are fixed by the by-laws or the custom of the corporation. The executive head of a corporation and the manager of its

§ 207.

¹ Duggan v. Pacific Boom Co., 6 Wash. 593; 34 Pac. 157; 36 Am. St. 182; in many cases the authority of the president and secretary are construed together. See cases under Sec. 204; see, also, cases under Sec. 208.

² Coolidge v. Schering, 32 Wash. 557; 73 Pac. 682.

§ 208.

¹ Brooks v. James, 16 Wash. 335; 47 Pac. 751.

affairs may be the president, secretary, or other officer, or he may be called a manager. The trustees necessarily cannot carry out the details of the business of a corporation and these are usually intrusted to some managing officer or agent. The managing officer has usually express or implied authority to do everything within the ordinary line of business of the corporation, but, ordinarily, he would have no power to bind the corporation in matters not pertaining to the ordinary business of the corporation. When a corporation names some person as its manager, and allows him to control about all of its business transactions, it will be held responsible for the acts of such manager in the name of the corporation, until it has been affirmatively shown that such acts were unauthorized.¹ An act of the president and general manager of a corporation, not authorized by the board of trustees, is valid if subsequently ratified by all the stockholders.² One seeking to enforce the liability of a corporation on a contract alleged to have been made by it should not be non-suited for failure to show that the contract was authorized by the corporation, when the evidence shows that it was entered into on behalf of the corporation by its secretary and treasurer, who also at

§ 209.

¹ Carrigan v. Port Crescent Improvement Co., 6 Wash. 590; 34 Pac. 148; cited in the following cases: Miller v. Washington So. R. Co., 11 Wash. 414; 39 Pac. 673; Citizens Nat. Bank v. Wintler, 14 Wash. 558; 45 Pac. 38; 53 Am. St. 890; Saunders v. U. S. Marble Co., 25 Wash. 475; 65 Pac. 782; Anderson v. Wallace Lumber etc. Co., 30 Wash. 147; 70 Pac. 247; West Seattle L. & I. Co. v. Novelty Mill Co., 31 Wash. 435; 72 Pac. 71; G. V. B. Min. Co. v. First Nat. Bank, 95 Fed. 30; Cox v. Robinson, 82 Fed. 284.

² Glover v. The Rochester German Ins. Co., 11 Wash. 143; 39 Pac. 380.

the time occupied the position of general and financial manager of the company, and was entrusted by the board of trustees with the general management of its affairs, since the relation of such officer to the corporation and its course in dealing through him raised a question for the jury to determine whether or not he was authorized to make the contract in controversy.³ A promissory note payable to a corporation in the hands of a third person, bearing the endorsement of the corporation, signed by its general manager, will raise the presumption that the endorsement was made with authority and that the holder is the owner of the note.⁴

Liability of officers for mismanagement.

§ 210. The general officers of a corporation who direct its business cannot use the corporate name and property for their individual enterprises, and avoid answering personally to the creditors of the corporation or others who are injured by their misfeasance.¹ Where the property of a corporation is being mismanaged and is in danger of being lost to its stockholders through the collusion and fraud of its officers, a court of equity can appoint a receiver to take charge of the property.² A complaint in an action asking a personal judgment against a director and officer of an insolvent corpora-

§ 209.

³ *Saunders v. U. S. Marble Co.*, supra.

⁴ *Citizens Nat'l Bank v. Wintler*, supra.

⁵ See cases under Secs. 205 and 207.

⁶ See case of *Rattelmiller v. Stone*, 28 Wash. 104; 68 Pac. 168.

§ 210.

¹ *Morrison v. Blue Star Nav. Co.*, 26 Wash. 541; 67 Pac. 244.

² *Cameron v. Groveland Imp. Co.*, 20 Wash. 169; 54 Pac. 1128; 72 Am. St. 26.

tion, on the ground that he had procured a fraudulent sale on execution of the corporate realty to himself at a grossly inadequate price, does not state facts sufficient when the complaint alleges that he still holds the property so purchased by him for the benefit of himself and his associates, since the proper remedy in such cases, where the director has not converted the corporate property to his own use or diverted it to other uses than the payment of corporate debts, would be an action to set aside the transfer.³ In an action by one stockholder of a corporation against another the complaint is good against demurrer, when it alleges that the corporation was indebted to the plaintiff in amounts aggregating seven hundred sixty-three dollars and seventy-seven cents; that the defendant was treasurer of the corporation, and had, in collusion with its other officers, sued the corporation and obtained judgment by default; that an execution had been issued and the real estate of the corporation was about to be sold thereunder; that the defendant as treasurer, had five hundred dollars in money belonging to the company and was also indebted on his stock subscription in the sum of seven hundred and sixty-two dollars and twenty-five cents; that he had refused to render any account to the stockholders, as treasurer, of the moneys alleged to be in his hands; and that, if allowed to proceed with the sale, the corporation would be rendered insolvent and the plaintiff's debt would be lost, as well as his interest in the corporate property sacrificed.⁴

§ 210.

³ *Potvin v. Denny Hotel Co.*, 26 Wash. 309; 66 Pac. 376.

⁴ *Cross v. Johnson*, 20 Wash. 124; 54 Pac. 1000.

⁵ See case of *First Nat'l Bank of Pullman v. Gaddis*, 31 Wash. 596; 72 Pac. 460.

CHAPTER XI.

ACTIONS BY AND AGAINST CORPORATIONS.

- § 211. Capacity of corporations to sue and liability of corporations to be sued.
- 212. Venue of actions by and against corporations.
- 213. Service of process in actions against corporations.
- 214. Pleadings in actions by or against corporations.
- 215. Special proceedings against corporations.

Capacity of corporations to sue and liability of corporations to be sued.

§ 211. All corporations have the right to sue and may be sued, in all courts, in like cases as natural persons,¹ and corporations are entitled, to the same extent as natural persons to remedies provided by statute, and the same remedies may be used against corporations as may be used against natural persons. A corporation has the same right as a natural person to confess judgment, compromise suits or submit to arbitration.

Venue of actions by and against corporations.

§ 212. An action by a corporation must conform to the same rules as an action by a natural person. An action against a corporation may be brought in any county where the corporation has an office for the transaction of business, or any person resides upon whom process may be served against such corporation, unless

§ 211.

¹ Sec. 5.

² Sec. 28.

otherwise provided in the statute.¹ A judgment, rendered against a corporation in another county than one meeting the above requirements, is void.²

Service of process in actions against corporations.

§ 213. The statute provides a method of serving process upon corporations.¹ Service of process issued out of the superior court of Clark county upon a purser and a wharfinger in the employ of a foreign corporation is sufficient, where the company was operating a line of steamers on the Columbia river, which, under the charge of the purser, received and discharged freight and passengers at Vancouver, landing regularly at the wharf there for that purpose, and hence making the wharf an office in this state for the transaction of business.² Service on a domestic corporation by service on an agent in charge of a branch store is not sufficient service,³ and notice of an action will not dispense with service of a summons.⁴ The service of a summons upon an officer of a foreign corporation temporarily within the state is void.⁵ Service upon foreign fraternal insurance companies is made by service upon the commissioner of in-

§ 212.

¹ Sec. 99.

² *McMaster v. Advance Thresher Co.*, 10 Wash. 147; 38 Pac. 760.

§ 213.

¹ Secs. 88, 89, 90, 91, 97, 98.

² *Seivers v. Dalles etc. Nav. Co.*, 24 Wash. 302; 64 Pac. 539; fol. in *Vogel v. Same*, 25 Wash. 672; 64 Pac. 539.

³ *Osborne v. Columbia etc. Corp.*, 9 Wash. 666; 38 Pac. 160.

⁴ *Osborne v. Columbia etc. Corp.*, supra.

⁵ *Carstens et al. v. Leidigh etc. Lumber Co.*, 18 Wash. 450; 51 Pac. 1051; 63 Am. St. 906; 39 L. R. A. 548.

insurance.⁶ In general, service upon other foreign corporations is made by service upon a resident agent.⁷ Service upon a president of a bank does not make him individually a party to the action.⁸

Pleadings in actions by and against corporations.

§ 214. The general rules of pleading apply as well to corporations. In an action by or against a corporation, the complaint should allege corporate existence. If the complaint, in an action against a corporation, alleges the corporate existence of the defendant and the only answer of the defendant is a general denial, the defendant cannot complain that there was no affirmative proof of its corporate existence.¹ If a complaint against a corporation does not allege the corporate existence of the defendant, objection thereto is waived by defendant's plea of counter-claim as though it were in fact a corporation.² When it is necessary to plead the articles of incorporation, it is sufficient to state them in substance.³ A general demurrer will not raise the question of failure to allege corporate existence.⁴

Special proceedings—Quo warranto.

§ 215. Corporations, with respect to special remedies provided by law, have the same rights as natural persons.

§ 213.

⁶ Sec. 97.

⁷ Secs. 55, 97.

⁸ State ex rel. Boardman v. Ball, 5 Wash. 387; 31 Pac. 975; 34 Am. St. 866.

§ 214.

¹ Garneau v. Port Blakeley Mill Co., 8 Wash. 467; 36 Pac. 463.

² Frost v. Ainslie Lumber Co., 3 Wash. 241; 28 Pac. 354, 915; cited in Sengfelder v. Mutual Fire Ins. Co., 5 Wash. 121; 31 Pac. 428.

³ Seal v. Cameron, 24 Wash. 62; 63 Pac. 1103.

⁴ Sly v. Palo Alto Gold Min. Co., 28 Wash. 485; 68 Pac. 871.

Special proceedings, in our statute, however, in the nature of quo warranto, apply only to public or private corporations or officers or persons assuming to be officers thereof.¹ When any association or number of persons shall act within this state as a corporation, without being legally incorporated, they may be ousted from the exercise of these powers by an action in the nature of quo warranto,² or if any corporation does or omits to do what amounts to a surrender or forfeiture of its rights and privileges as a corporation, or where it exercises powers not conferred by law, it may be ousted from the exercise of its corporate franchise or rights by such an action.³ The title to a corporate office cannot be tried in action of replevin to recover the personal property of the corporation from an officer in possession of the office and performing its duties under a bona fide claim of right.⁴ The stockholders of a corporation have such an interest in the offices as will warrant them in proceeding by information in the nature of quo warranto for the purpose of ousting those illegally holding office.⁵ Although the application for a writ of mandamus is made in the interest of a private person, it is proper practice to bring the proceeding in the name of the state, on relation of the person financially interested.⁶ It is the duty of the prosecuting attorney to institute quo warranto proceedings.⁷

§ 215.

¹ Sec. 92.

² Sec. 92.

³ Sec. 92.

⁴ *Standard Gold Mining Co. v. Byers*, 31 Wash. 100.

⁵ *State ex rel. Mitchell v. Horan*, 22 Wash. 197; 60 Pac. 135.

⁶ *State ex rel. Weinberg v. Pacific Brewing etc. Co.*, 21 Wash. 451; 58 Pac. 584; 47 L. R. A. 248.

⁷ *State v. Seattle Gas etc. Co.*, 28 Wash. 488; 68 Pac. 946.

CHAPTER XII.

LIABILITIES OF CORPORATIONS FOR TORTS AND CRIMES.

§ 216. Liability of a corporation for its torts.

217. Liability of a corporation for its crimes.

Liability of a corporation for its torts.

§ 216. A corporation is liable for the torts of its officers, agents, or servants, under such circumstances as would attach liability to natural persons.¹ A corporation is liable for the wrongful acts or omissions of its agents, although the tort involves the element of wrongful intent or the element of malice. The rule for fixing compensatory damages for the torts of corporations is the same as for natural persons. The courts do not agree as to the liability of corporations for exemplary damages. Our court has refused to recognize the doctrine of exemplary or punitive damages, and has condemned the doctrine in the strongest terms.² Where, however, exemplary damages are allowed by statute they may be recovered.³ Damages allowed for humiliation and dis-

§ 216.

¹ Jaggard on Torts, page 167.

² *Spokane Truck & Dray Co. v. Hoefer*, 2 Wash. 45; 25 Pac. 72; 26 Am. St. Rep. 842; 11 L. R. A. 689; cited in *Atrops v. Costello*, 8 Wash. 152; 35 Pac. 620; distinguished in *Sloan v. Langart*, 6 Wash. 29; 32 Pac. 1015, and *Seattle Crockery Co. v. Haley*, 6 Wash. 313; 32 Pac. 650; 36 Am. St. Rep. 156; approved *Levy v. Fleischner etc. Co.*, 12 Wash. 17; 40 Pac. 384.

³ *Sloan v. Langert*, supra; *Seattle Crockery Co. v. Haley*, supra.

grace are items of compensatory damages, and not exemplary or punitive damages.⁴

Liability of a corporation for its crimes.

§ 217. There are some crimes which a corporation, from its nature, cannot commit, but, as a general rule, a corporation may be indicted and punished by a fine the same as a natural person. The constitution forbids corporations from combining to fix the price or to limit or regulate the production of any product or commodity.¹ The legislature, however, has not passed any law providing penalties for the violation of this provision. There are several statutory provisions making certain acts or omissions of the officers and agents of corporations an offense and providing penalties therefor.²

§ 216.

⁴ *Wilson v. Northern Pac. Ry. Co.*, 5 Wash. 624; 32 Pac. 468; 34 Pac. 146.

§ 217.

¹ Sec. 22.

² Sec. 41. Prohibits the making of false entries in the corporation stock-book or the omitting of proper entries therein, or the refusal or neglect to exhibit books when required by law, etc. Sec. 81 is an act to protect the stockholders in a corporation, or the persons dealing with a corporation, from false and wilful misrepresentation made by the officers and agents of a corporation.

CHAPTER XIII.

DISSOLUTION OF CORPORATIONS.

- § 218. Dissolution by the expiration of the time fixed by its articles.
- 219. Dissolution by complying with the statutory provisions for the dissolution of corporations.
- 220. Dissolution because of a forfeiture of its rights in a proceeding by the state for a violation of law or other cause.

Dissolution by the expiration of time fixed by the articles of incorporation.

§ 218. A corporation cannot have perpetual succession in this state. The articles of incorporation must fix the time of existence of the corporation, and this time must not exceed fifty years.¹ At the expiration of the time fixed by the articles the corporation is dissolved and ceases to exist.

Dissolution by complying with the statutory provisions for the dissolution of corporations.

§ 219. If all claims against a corporation have been discharged, it may be dissolved by the Superior Court of the county in which it has its principal place of business by complying with the provisions of our statute for the

§ 218.

¹ Sec. 24.

dissolution of corporations,¹ but if the object of the dissolution is to get rid of the holders of the minority of the stock, the court will not allow the corporation to be dissolved.²

Dissolution because of a forfeiture of its rights in a proceeding by the state for a violation of law or other cause.

§ 220. A corporation may be ousted of its rights in a proceeding by the state when it does or omits to do acts which amount to a surrender or forfeiture of its rights and privileges as a corporation, or where it exercises powers not conferred by law.¹ In case of judgment against the corporation in such proceeding, the court shall restrain the corporation and appoint a receiver of its property and effects, and take an account thereof, and make a distribution thereof among the corporation's creditors.² It is the duty of the prosecuting attorney to institute proceedings for that purpose.³ The attorney general has no authority to institute such a proceeding.⁴

§ 219.

¹ Sec. 46.

² *Theis v. Spokane Falls Gas Light Co.*, 33 Wash. 045; 74 Pac. 1004.

§ 220.

¹ Sec. 94.

² Sec. 95.

³ Sec. 93.

⁴ *State v. Seattle Gas etc. Co.*, 28 Wash. 488; 68 Pac. 946.

⁵ See case of *Ridpath v. San Poil etc. Co.*, 26 Wash. 427; 67 Pac. 229.

CHAPTER XIV.

INSOLVENCY OF CORPORATIONS.

- § 221. What facts constitute insolvency.
- 222. Powers of insolvent corporations.
- 223. Rights of creditors of insolvent corporations.

What facts constitute insolvency.

§ 221. When a corporation has reached a point where its debts are equal to or greater than its property and it cannot pay in the ordinary course, and its business is no longer profitable, it ought to be wound up and its assets distributed.¹ A corporation was held to be insolvent although its assets, by computing its book accounts and bills receivable at their face value, exceeded its liabilities, the court saying that every business man knows that such a computation falls far short of representing the actual value of the assets of a mercantile establishment.² Where the total indebtedness of a corporation does not exceed two-thirds of its assets at a conservative valuation and the corporation is doing business with its affairs in as good condition as at any time during its existence and with every indication of their continuing in the same condition, it is not insolvent.³ Although a corporation is embarrassed to some extent and has not money on hand to pay all of its

§ 221.

¹ Thompson v. Huron Lumber Co., 4 Wash. 600; 30 Pac. 741; 31 Pac. 25.

² Conover v. Hull, 10 Wash. 673; 39 Pac. 166; 45 Am. St. 810.

³ Strohl v. Seattle Nat'l Bank, 25 Wash. 28; 64 Pac. 916.

indebtedness, but its business is regarded as profitable, and the evident purpose of the corporation is to continue it, the court will not be warranted in finding that it is insolvent.⁴ When a corporation is conducting a profitable business the fact that its indebtedness exceeds its assets does not make it insolvent.⁵ The action of the trial court in appointing a receiver for a corporation upon the application of a creditor will not be disturbed on appeal on a showing made that the corporation had been conducting a telephone business which it had recently abandoned upon a transfer of its franchises and business to another company; that it was allowing its entire tangible property, consisting of wires, poles and telephone instruments, to go to ruin, without any effort to care therefor; and that the board of trustees cannot agree upon the management of its affairs, and that the company must continue without official management, unless a receiver be appointed.⁶ In an action against a corporation for the appointment of a receiver and the recovery of shares of stock, testimony as to the fact that no books of account were kept by the corporation is admissible.⁷

§ 221.

⁴ *Leslie v. Wilshire*, 6 Wash. 282; 33 Pac. 505.

⁵ *Brooks v. Skookum Mnfg. Co.*, 9 Wash. 80; 37 Pac. 284.

⁶ *Fernald v. Spokane & B. C. Tel. Co.*, 31 Wash. 672; 72 Pac. 412.

⁷ *Jones v. Western Mnfg. Co.*, 27 Wash. 136; 67 Pac. 586.

⁸ A bank would be presumed to know that a corporation is insolvent when it accepts whiskey in payment of a note due it from a liquor company. *Carroll v. Pacific Nat'l Bank*, 19 Wash. 639; 54 Pac. 32.

⁹ See case of *Roberts v. Washington Nat'l Bank*, 9 Wash. 12; 37 Pac. 26.

¹⁰ See case of *State ex rel. Jenkins v. Equitable Endemnity etc. Assoc.*, 18 Wash. 514; 52 Pac. 234, where the court held domestic insurance corporation insolvent.

Powers of insolvent corporations.

§ 222. A corporation is not dissolved when it becomes insolvent. It still has power to carry on its business until restrained from so doing by an order of a court of competent jurisdiction. The capital of the corporation being a trust fund, the corporation must not do anything to jeopardize the rights of its creditors. Many cases have arisen in our own courts where the powers of an insolvent corporation have been passed on and defined. An insolvent bank may, in consideration of a loan to it by another bank of ready money with which to meet demands upon it, transfer part of its property as security therefor, without rendering the transaction invalid as to creditors.¹ An insolvent corporation can make a common law assignment of all its property for the benefit of its creditors,² but the deed of assignment of an insolvent corporation can be set aside by the court on the appointment of a receiver.³ An insolvent corporation may transfer all of its property to the mortgagee thereof, if such transfer is made in good faith.⁴ An insolvent corporation may make a valid sale of its property.⁵ A mortgage given by a corporation which is heavily indebted, in order to put

§ 222.

¹ *Roberts v. Washington etc. Bank*, 11 Wash. 550; 40 Pac. 225.

² *Nyman v. Berry*, 3 Wash. 734; 29 Pac. 557; cited in *McKay v. Elwood*, 12 Wash. 583; 41 Pac. 919; *Cerf etc. Co. v. Wallace*, 14 Wash. 253; 44 Pac. 264; *Oleson v. Bank of Tacoma*, 15 Wash. 150; 45 Pac. 734; *Thompson v. Huron Lumber Co.*, 4 Wash. 604; 30 Pac. 741; 31 Pac. 25.

³ *Oleson v. Bank of Tacoma*, *supra*; quoted in *New York Nat'l Exch. Bank v. Metropolitan Bank*, 28 Wash. 562; 68 Pac. 905.

⁴ *Klosterman v. Mason County etc. R. R. Co.*, 8 Wash. 281; 36 Pac. 136.

⁵ *Klosterman v. Mason County etc. R. R. Co.*, *supra*; *Mayer v. Woolery*, 10 Wash. 354; 39 Pac. 135.

itself in better shape to continue business, is a valid mortgage.⁶ A mortgage given by an insolvent corporation to one of its creditors who has knowledge of its insolvency is voidable as to its prior or subsequent creditors.⁷ An insolvent corporation cannot make a confession of judgment amounting to a preference.⁸ An insolvent corporation cannot make a voluntary preference among its creditors.⁹ A corporation cannot give a valid chattel mortgage for the purpose of preferring the mortgagee over other creditors.¹⁰ A corporation cannot take advantage of an insolvent law, unless it is specially included in such law.¹¹ An insolvent corporation cannot give a mortgage to secure an antecedent loan, although there was an agreement at the time the loan was given that if the loan was not paid a mortgage would be given.¹²

Rights of creditors of insolvent corporations.

§ 223. The rights of creditors of insolvent corpora-

§ 222.

⁶ Vincent v. Snoqualmie Mill Co., 7 Wash. 566; 35 Pac. 396.

⁷ Cook v. Moody, 18 Wash. 114; 50 Pac. 1020; 63 Am. St. 872.

⁸ Conover v. Hull, 10 Wash. 673; 39 Pac. 166; 45 Am. St. 810; cited in Biddle Pur. Co. v. Port Townsend Steel etc. Co., 16 Wash. 681; 48 Pac. 407; Burrell v. Bennett, 20 Wash. 647; 56 Pac. 375; State ex rel. Strohl v. Superior Court, 20 Wash. 551; 56 Pac. 35; 45 L. R. A. 177.

⁹ Thompson v. Huron Lumber Co., 4 Wash. 600; 30 Pac. 741; 31 Pac. 25; cited in Conover v. Hull, supra; Allen v. Stallcup, 13 Wash. 632; 43 Pac. 384; Compton v. Schwabacher Bros., 15 Wash. 306; 46 Pac. 338; Biddle Pur. Co. v. Port Townsend Steel Co., supra; State ex rel. Strohl v. Superior Court, supra; Potvin v. Denny Hotel Co., 26 Wash. 315; 66 Pac. 376; Ames v. Heslet, 19 Mont. 188; 47 Pac. 806; Ingwersen v. Edgecombe, 42 Neb. 740; 60 N. W. 1033.

¹⁰ Van Brocklin v. Queen City Printing Co., 19 Wash. 552; 53 Pac. 822.

¹¹ Nyman v. Berry, supra; see McKay v. Elwood, supra.

¹² Biddle Pub. Co. v. Port Townsend Steel Co., supra.

tions are based upon the theory that the assets of the corporation are a trust fund, and being a trust fund, the courts will not permit one creditor to do any act that will prejudice the rights of any other creditor, and it has been frequently held that the creditors must share equally in such fund.¹ The statute authorizes the appointment of a receiver when the corporation has been dissolved or is in imminent danger of insolvency.² A receiver will be appointed for an insolvent corporation upon the petition of a creditor.³ The Federal Bankruptcy Act of 1898 did not suspend the right of a state court to appoint a receiver, but our state court retains jurisdiction over such corporations until they are adjudged bankrupt under the law of Congress by the proper tribunal.⁴ A preference made by an insolvent corporation among its creditors will be set aside by the court.⁵ A creditor for whose

§ 223.

¹ *Thompson v. Huron Lumber Co.*, 4 Wash. 600; 30 Pac. 741; 31 Pac. 25; *Holbrook etc. Co. v. Peters etc. Co.*, 8 Wash. 344; 36 Pac. 256; quoted in *Nat'l Wallpaper Co. v. Columbia Nat'l Bk.* (Neb.), 93 N. W. 1005; *Compton v. Schwabacher*, 15 Wash. 306; 46 Pac. 338; cited in *Washington Liquor Co. v. Alladio Cafe Co.*, 28 Wash. 176; 68 Pac. 444; *State ex rel. Strohl v. Superior Court*, 20 Wash. 545; 56 Pac. 35; 45 L. R. A. 177; *Biddle Pub. Co. v. Port Townsend Steel Co.*, 16 Wash. 681; 48 Pac. 407; cited in *State ex rel. Strohl v. Superior Court*, *supra*; *Coler v. Allen*, 114 Fed. 611; *Conover v. Hull*, 10 Wash. 673; 39 Pac. 166; 45 Am. St. 810; *Burrell v. Bennett*, 20 Wash. 647; 56 Pac. 375; *Adamant Mfg. Co. v. Wallace*, 16 Wash. 614; 48 Pac. 415; cited in *Dunlap v. Rauch*, 24 Wash. 624; 64 Pac. 807.

² Sec. 100.

³ See citations note 1; *N. Y. Nat'l Exch. Bank v. Met. Bank*, 28 Wash. 553; 68 Pac. 905.

⁴ *State ex rel. Strohl v. Superior Court*, *supra*.

⁵ *Thompson v. Huron Lumber Co.*, *supra*; *Compton v. Schwabacher*, *supra*; *Conover v. Hull*, *supra*; *Biddle Pub. Co. v. Port Townsend Steel Co.*, *supra*; *Van Brocklin v. Queen City Printing Co.*, 19 Wash. 552; 53 Pac. 822.

benefit a corporation has made an illegal preference may share in the funds on the same basis as other creditors.⁶ Where the notes of an insolvent corporation are given to a stockholder in consideration of the purchase of his stock, not for the benefit of the corporation but for that of a third person, such stockholder is not entitled to share in the assets of the corporation until after the claims of all other creditors, except those of stockholders having shares of stock, have been satisfied.⁷ Where a receiver of an insolvent lumber manufacturing corporation was appointed, with directions to continue the business, and it was made a condition of his appointment that all claims for labor incurred by the corporation within ten months prior to the beginning of the suit in which the receiver was appointed should be paid in full out of the assets and earnings of the plant, one who was engaged prior to such appointment, in getting out logs for the corporation, and who, after such appointment, paid off his labor claims on the advice of the court that they were preferred claims and came within the terms of the order directing the receiver to pay such in full and that it would be unnecessary for him to file lien claims against the logs, is entitled to have the amount paid by him in satisfaction of the labor claims of his employes as a preferred claim against the receiver.⁸ A receiver has the rights of the creditors at whose instance he was appointed, and may enforce stock subscriptions although the corporation itself might not be authorized to sue on the subscriptions.⁹ The receiver of a foreign national bank cannot be re-

§ 223.

⁶ Thompson v. Huron Lumber Co., *supra*.

⁷ Van Brocklin v. Queen City Printing Co., *supra*.

⁸ Davis v. Foster, 29 Wash. 363; 69 Pac. 1102.

⁹ Cole v. Satsop R. R. Co., 9 Wash. 487; 37 Pac. 700; 43 Am. St. 858.

quired to pay a state tax on the shares of stockholders out of the assets of the bank to the detriment of the bank's creditors.¹⁰ A creditor of a corporation in the hands of a receiver may sue the corporation on a note executed before the receiver was appointed.¹¹ A transfer of property by an insolvent corporation to prefer a creditor will not afford ground of attachment by another creditor.¹² The fact that a creditor is a stockholder and director in an insolvent corporation does not estop him from participating in the funds of the corporation.¹³ An attachment levied upon the property of an insolvent corporation by a creditor having knowledge of its condition will be set aside, although insolvency proceedings have not been instituted against the corporation.¹⁴ Where the bondholders of an insolvent corporation are identical with its original stockholders, the lien of the mortgage securing the bonds will be postponed in favor of the creditors of the corporation.¹⁵ A judgment creditor of an insolvent corporation may enforce unpaid stock subscriptions by an action, although no prior call has been made for the payment of the sum subscribed.¹⁶ A creditor who holds a judgment lien upon the real property of a corporation cannot complain of a fraudulent conveyance of the premises to an officer thereof, since it is necessarily made subject to his lien, which remains unimpaired even though

§ 223.

¹⁰ *Baker v. King County*, 17 Wash. 622; 50 Pac. 481.

¹¹ *Allen v. Olympia Light & Power Co.*, 13 Wash. 307; 43 Pac. 55.

¹² *Holbrook etc. Co. v. Peters etc. Co.*, *supra*.

¹³ *Thompson v. Huron Lumber Co.*, *supra*.

¹⁴ *Compton v. Schwabacher*, *supra*.

¹⁵ *Manhattan Trust Co. v. Seattle Coal etc. Co.*, 16 Wash. 499; 48 Pac. 333, 737.

¹⁶ *Adamant Mnfg. Co. v. Wallace*, *supra*.

the transfer is fraudulent as to other creditors.¹⁷ Fraud in the valuation of property transferred to a corporation in consideration of an issuance of corporate bonds cannot be taken advantage of by a creditor, when the transaction took place prior to the time that his cause of action arose.¹⁸ Where the personal property of an insolvent corporation has been transferred to a director for the purpose of placing it beyond the reach of creditors, a judgment creditor is entitled to recover its value from the grantee.¹⁹ The subsequent insolvency of a corporation cannot be given in evidence for the purpose of affecting the validity of a prior instrument, which was valid at the time of its execution.²⁰ Where general creditors have for more than a year acquiesced in an order of the court discharging a receiver and permitting an alleged insolvent bank to resume business, they cannot be heard to object that the receiver did not represent them at the hearing.²¹ The double liability of stockholders of a banking corporation is a secondary liability, and the assets of the corporation must be exhausted before the superadded liability can be enforced against the stockholders.²² When a bank is in the hands of a receiver, the superadded liability can be reached only by a suit by the receiver.²³ Where

§ 223.

¹⁷ *Potvin v. Denny Hotel Co.*, 26 Wash. 309; 66 Pac. 376.

¹⁸ *Sligh v. Shelton Southeastern R. R. Co.*, 20 Wash. 16; 54 Pac. 763.

¹⁹ *Potvin v. Denny Hotel Co.*, *supra*.

²⁰ *Bank of California v. Puget Sound etc. Co.*, 20 Wash. 637; 56 Pac. 395.

²¹ *Bank of California v. Puget Sound etc. Co.*, *supra*.

²² *Wilson v. Book*, 13 Wash. 676; 43 Pac. 939.

²³ *Watterson v. Masterson*, 15 Wash. 511; 46 Pac. 1041; *Wilson v. Book*, *supra*.

the stock was for the benefit of the community estate the superadded liability can be enforced against the community property of the husband and wife.²⁴ One who was not a stockholder in a banking corporation at the time an indebtedness was incurred or created cannot be subjected to the statutory liability of stockholders.²⁵

§ 223.

²⁴ Shuey v. Adair, 24 Wash. 378; 64 Pac. 536.

²⁵ Shuey v. Holmes, 21 Wash. 223; 57 Pac. 818.

CHAPTER XV.

FOREIGN CORPORATIONS.

- § 224. Rights and powers of foreign corporations.
- 225. Statutory requirements for foreign corporations.
- 226. Effect of failure to comply with statutory requirements.

Rights and powers of foreign corporations.

§ 224. Corporations organized under any state or territory of the United States or of any foreign country, state or colony, if organized for purposes for which domestic corporations can be organized in this state, upon compliance with the laws governing foreign corporations, have the same rights and powers as domestic corporations.¹ No corporation organized outside the limits of this state shall be allowed to transact business within this state on more favorable terms than are prescribed by law for similar corporations organized under the laws of this state.² A foreign corporation, upon compliance with our laws, becomes a resident of the state, and to such intents and purposes, a domestic corporation.³ The same prohibition as to the right to acquire lands applies to foreign corporations, a majority of whose stock is held by aliens, unless these aliens have declared their intention

§ 224.

¹ Sec. 53.

² Secs. 7, 53.

³ *Dittenhoefer et al v. Coeur d'Alene Clothing Co.*, 4 Wash. 519; 30 Pac. 660.

to become citizens of the United States, as apply to alien natural persons,⁴ nor can a foreign corporation deal in real estate or carry on a brokerage business therein in this state.⁵ Foreign corporations organized prior to 1890 do not fall within the provisions of that act prohibiting the business of buying and selling land.⁶ A foreign corporation is subject to garnishment,⁷ but a garnishment in a foreign state by a citizen of this state is a good defense to the action.⁸ Since the act of British Columbia authorizing foreign corporations to do business in that province contains no express declaration that such corporations, on complying with the act, shall become domestic corporations, the effect of the act is merely to license foreign corporations to do business in the province, and not to make them domestic corporations.⁹ The fact that a fishing company had its real and active place of business outside of the state during certain seasons of the year, would not make it a non-resident, where it had otherwise fully complied with the requirements of our corporation laws, nor would such fact justify the seizure of its fishing site by a stranger.¹⁰

Statutory requirements for foreign corporations.

§ 225. A foreign corporation, doing business in this state, must cause to be filed and recorded in the office of

§ 224.

⁴ Secs. 96, 53.

⁵ Sec. 55.

⁶ *Realty Co. v. Appolonia*, 5 Wash. 437; 32 Pac. 219.

⁷ *Dittenhoefer et al. v. Coeur d'Alene Clothing Co.*, supra.

⁸ *Neufelder v. German American Ins. Co.*, 6 Wash. 336; 33 Pac. 870; 36 Am. St. 166; 22 L. R. A. 287.

⁹ *Daniel v. Gold Hill Mining Co.*, 28 Wash. 411; 68 Pac. 884.

¹⁰ *Hastings v. Anacortes Packing Co.*, 29 Wash. 224; 69 Pac. 776.

the Secretary of State a certified copy of its charter, articles of incorporation, memorandum of association or certificate of incorporation certified by the officer who is the custodian of the same,¹ and shall appoint a resident agent, in writing, upon whom service of process may be made, and file such appointment in the office of the Secretary of State. When the corporation changes its agent or place of business, it must file a new appointment, stating the change of such agent or place of business.²

Effect of failure to comply with statutory requirements.

§ 226. Although it is the duty of foreign corporations to comply with the statutory regulations before doing business in this state,¹ they frequently attempt to do business without such compliance. The failure of a foreign corporation to comply with these requirements does not invalidate its acts,² and a contract with it cannot be repudiated because it has not complied with the laws relative to foreign corporations.³ A foreign corporation is entitled to the benefit of the mechanic's lien law, although it has not complied with the laws of this state

§ 225.

¹ See Sec. 54 for requirements in full.

² See Sec. 55 for requirements in full.

§ 226.

¹ See Secs. 53, 54 and 55, where requirements are set out fully.

² *Dearborn Foundry Co. v. Augustine*, 5 Wash. 67; 31 Pac. 327; *Sayward v. Gardner*, 5 Wash. 247; 31 Pac. 761; 33 Pac. 389; *Huttig Bros. Mfg. Co. v. Denny Hotel Co.*, 6 Wash. 122; 32 Pac. 1073; *Edison Co. v. Nav. Co.*, 8 Wash. 370; 36 Pac. 260; 40 Am. St. 910; 24 L. R. A 315; *Whitman Agricultural Co. v. Strand*, 8 Wash. 647; 36 Pac. 682.

³ *Whitman Agricultural Co. v. Strand*, *supra*; *La France etc. Co. v. Town of Mount Vernon*, 9 Wash. 142; 37 Pac. 287; 38 Pac. 80; 43 Am. St. 827; *Rathbone v. Frost*, 9 Wash. 162; 37 Pac. 298.

relative to the appointment of an agent.⁴ A foreign corporation can sue in the courts of this state without having complied with the laws of this state relative to the appointment of an agent.⁵ The penalty for a failure to comply with the statute is a fine of two hundred fifty dollars,⁶ and the statutory penalty or fine is the only penalty for non-compliance with the law.⁷ The purchase of a note and mortgage by a foreign corporation with no intention of doing any other act here is not a transaction of business within the meaning of the statute.⁸

§ 226.

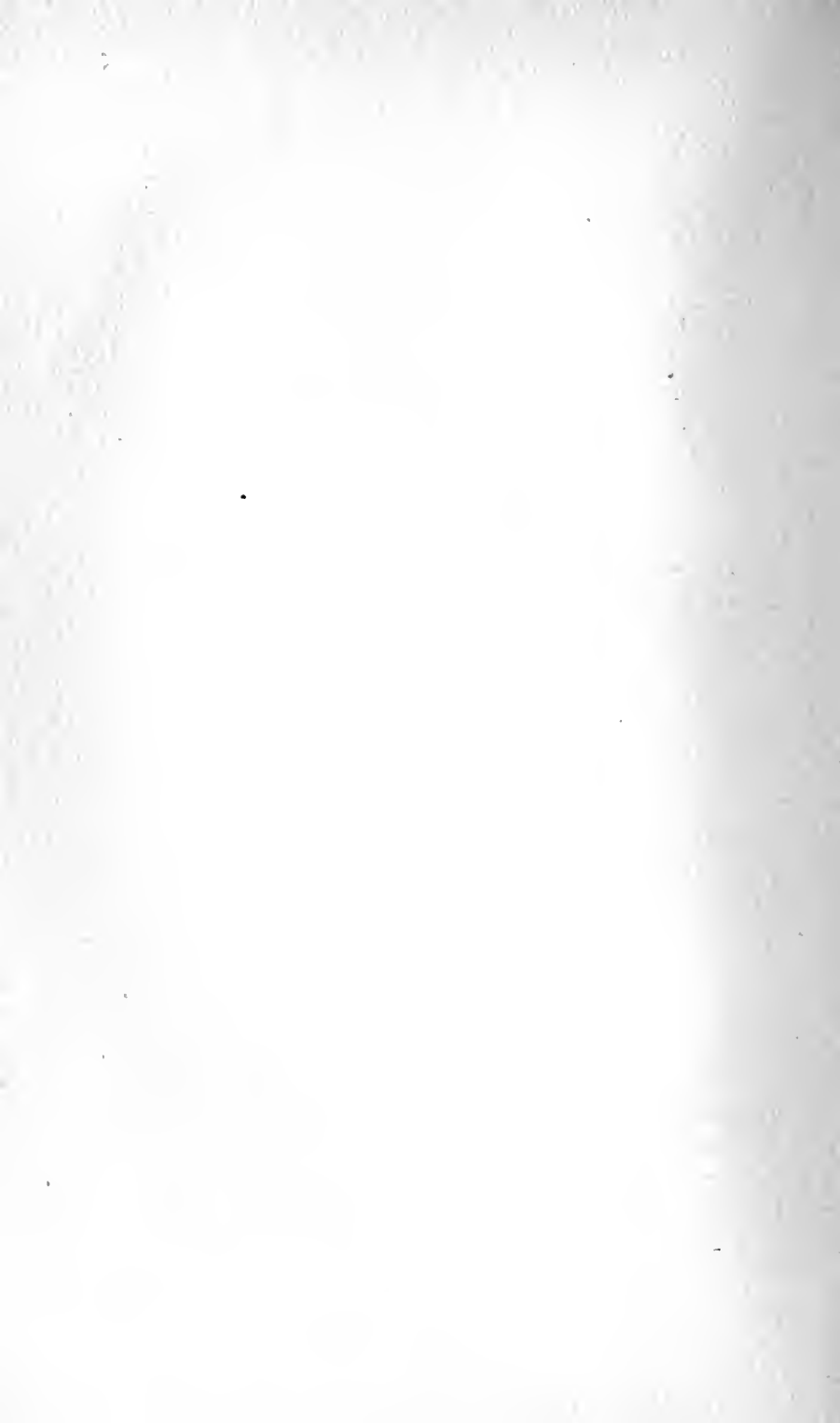
⁴ Dearborn Foundry Co. v. Augustine, *supra*; Huttig Bros. Mfg. Co. v. Denny Hotel Co., *supra*.

⁵ Marble etc. Bank v. Williams, 23 Wash. 766; 63 Pac. 511; La France Fire Engine Co. v. Town of Mount Vernon, *supra*; Dearborn Foundry Co. v. Augustine, *supra*.

⁶ Keene Guarantee Savings Bank v. Lawrence, 32 Wash. 572; 73 Pac. 680.

⁷ Sec. 56.

⁸ La France Fire Engine Co. v. Town of Mount Vernon, *supra*.



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PART III
FORMS FOR WASHINGTON
CORPORATIONS.

PART III

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1.

FORM AND CONTENTS OF ACKNOWLEDGMENTS
BY CORPORATIONS.

Certificates of acknowledgment of an instrument acknowledged by a corporation substantially in the following form shall be sufficient:

State of

ss.

County of

On this day of, A. D. 190 . ., before me personally appeared, to me known to be the (president, vice-president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Signature and title of officer.)

Sec. 82.

2.

APPOINTMENT OF AN AGENT BY THE.....
COMPANY.

(Foreign Corporation.)

To all whom it may concern, notice:

This certifies that the Company, a corporation, organized and doing business under and by virtue of the laws of the State of, with its principal place of business in the City of, County, in said state, and whose principal place of business in the State of Washington is in the City of, County, has this day appointed, of the City of, County, State of Washington, as its true and lawful agent and as the agent upon whom service of process can be made for service upon said Company, and such agent is hereby authorized to accept service of process in any action or suit pertaining to the property, business, or transactions of said Company, within the State of Washington, in which the said corporation may be a party.

Dated at, this day of, A. D. 19...

..... COMPANY.

By,

President.

(Corporate seal)

(or other chief officer.)

Attest.

.....,

Secretary.

Sec. 55. A change of agent, or a change of the principal place of business, is made by filing a new appointment reciting the change.

For appointment of agent of a foreign insurance company, see Sec. 98.

3.

APPOINTMENT OF AGENT BY (FOREIGN) FRATERNAL INSURANCE COMPANIES.

To all whom it may concern, notice:

This certifies that the Company, a fraternal insurance Company, organized and doing business under the laws of the State of, with its principal place of business in the City of, in County, in said state, and whose principal place of business in the State of Washington is in the City of, in County, has this day appointed, insurance commissioner for the State of Washington, and his successors in office, to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served, and that said Company agrees that any lawful process against it which is served on said agent or attorney shall be of the same legal force and validity as if served upon said Company, and that the authority of said attorney or agent shall continue and be in force so long as any liability remains outstanding in this state.

(Corporate seal) COMPANY.

Attest. President.

.....,
Secretary.

4.

ARTICLES OF INCORPORATION OF THE
COMPANY.

We, the undersigned persons, residents of the State of Washington, hereby associate ourselves for the purpose of forming a corporation, and for that purpose execute these articles in triplicate.

I.

The name of this corporation shall be the Company.

II.

The objects for which this corporation is formed are: (Here set out in full the business to be carried on by the corporation.)

III.

The capital stock of this corporation shall be dollars, divided into shares of the par value of dollars a share.

IV.

The time of existence of this corporation shall be (not more than fifty) years.

V.

The principal place of business of this corporation shall be in the City of, in the County of, in the State of Washington.

VI.

The number of trustees of this corporation shall be and the names of the first trustees who shall manage the affairs of the company until the (not less than two, nor more than six months) day of, A. D. 19.., are,, and

In testimony whereof, we have hereunto set our hands
this ——— day of, A. D. 19...

.....
.....
.....

State of Washington,

ss.

County of King.

This is to certify that on this day of,
A. D. 19.., before me, a notary public in and for the State
of Washington, duly commissioned and sworn, person-
ally appeared,, and, to me person-
ally known to be the persons who executed the foregoing
articles of incorporation, in triplicate, and severally
acknowledged to me that they executed the same freely
and voluntarily and for the uses and purposes therein
expressed.

In witness whereof, I have hereunto set my hand and
official seal the day and year first above written.

.....
Notary Public in and for the State of
Washington, residing at

Sec. 24.

5.

BANK STATEMENT.

State of Washington,

ss,

County of

....., being duly sworn, on oath deposes and says:

That he is the (president, vice-president, or cashier) of the Bank, of, Washington.

That the following is a true and correct statement of the condition of said bank on the first Monday of June, A. D. 19...

(Here give a detailed statement of the resources and liabilities, stating the amount of deposits, the aggregate loans and amount upon each class of securities, and other matters affecting the safety of their deposits.

Names of Stockholders	Addresses of Stockholders	No. of Shares
.....
.....
.....
Officers	Names	Addresses
Trustee
Trustee
Trustee
President
Vice-President
Cashier
.....

(President, Vice-President, or Cashier.)
of the Bank.

Subscribed and sworn to before me this day of
..... A. D. 19...

Notary Public in and for the State of
Washington, residing at.....

6.

BY-LAWS.

of the

..... COMPANY.

1. **Who are stockholders.**

Any person who holds one share of the company's stock is a stockholder.

2. **Rights and duties of stockholders.**

A stockholder is entitled to one vote for each share of (paid up) stock. Any person has the right to vote his stock in person or by power of attorney but such power of attorney must be written and witnessed. Each stockholder shall have the right to inspect the books and other records of the Company at any time but shall not be allowed to remove the books and records from the office of the Company for that purpose. Each stockholder must keep on file with the Secretary of the Company his post-office address, and, in case of his failure so to do, he waives his right to notice of the meetings of the stockholders.

3. **Meetings of stockholders.**

Quorum: (A majority) of the (paid up) stock shall be necessary to constitute a quorum for the transaction of business.

Annual Meeting of Stockholders: The annual meeting of the stockholders shall be held at the general place of business of the Company in the City of, Washington, at 8 P. M. on the 3rd Monday of the month of January in each and every year.

Special Meetings: The president of the company shall call special meetings of the stockholders when instructed by the Board of Trustees to do so or upon the request of the owners of one-third of the paid up stock of the Company

Notice of Meetings: No notice of meetings shall be necessary for the annual meeting of the stockholders but the secretary shall notify each stockholder by letter of all special meetings, giving in the notice a brief outline of the matters to come before the meeting. Such notices must be mailed to the stockholders at the address given by the stockholders to the Secretary and must be stamped and mailed at least ten days prior to the meeting.

4. Officers.

Officers: The officers of the Company shall consist of a President, Vice-President, Secretary, Treasurer, and General Manager, but the trustees of the Company may create other offices. Any two offices may be held by one person.

Election of Officers: The stockholders shall elect the Trustees of the Company at the annual meeting and a majority of the votes cast shall be necessary to elect. All other officers of the Company shall be elected by the Board of Trustees at its first meeting.

Term of Office: The officers of the Company shall hold office for a term of one year or until their successors are elected and qualified.

5. Duties of officers.

President: The President of the Company shall preside at all meetings of the stockholders and of the Board of Trustees, shall sign all notes and contracts of the Company, shall sign all stock certificates issued by the Company and generally do and perform all duties that usually devolve upon an officer in like capacity.

Vice President: The Vice President shall perform the duties of the President in the absence of the President or in case of the inability of the President to act.

Secretary: The Secretary of the Company shall keep the minutes of the meetings of the stockholders and of the Board of Trustees, shall keep the books and records of the Company and shall be custodian of the Company's seal and shall affix the company's seal to such instruments as is deemed proper by the Board of Trustees, shall sign all contracts entered into by the Company, shall sign all stock certificates and keep a record of the stockholders and a record of the addresses of the stockholders, as furnished by the stockholders, and generally do and perform the duties that devolve upon like officers in like corporations.

Treasurer: The treasurer shall receive and keep all moneys of the Company and shall pay out the same by checks to be signed by himself and one other officer of the Company. The treasurer shall furnish a surety bond for the safe keeping of the funds of the Company when required to do so by the Board of Trustees, such bond to be in such sum as is determined on by the Board of Trustees.

General Manager: The general manager shall be the general managing agent of the Company, and as such, shall have authority to make contracts for the Company in the ordinary course of business, and shall have authority to do all things necessary and proper to supervise, manage, and care for the business of the Company.

Trustees: The trustees of the Company shall have general supervision over the affairs of the Company, they shall determine the form of stock certificates to be used by the Company and shall regulate the manner of transfer thereof on the books of the Company, they shall make expenditures and declare dividends at their dis-

cretion, except in this, that dividends shall only be declared from the net earnings of the Company.

6. Trustees' meetings.

Time of Meeting: The regular meeting of the retiring Board of Trustees shall be held at 7 P. M. on the date and at the place of the annual meeting of the stockholders for the purpose of closing up the business of the retiring Board of Trustees. There shall be a meeting of the new Board of Trustees immediately after the adjournment of the stockholder's meeting at the same place as the stockholders meeting was held for the purpose of electing officers and for the transaction of such other business as may properly come before the Board.

Quorum: Any three trustees shall constitute a quorum for the transaction of business and a majority of the trustees present at any meeting shall be sufficient to decide any question.

Special Meetings: A special meeting of the Board of Trustees shall be called by the President upon request of any two members of the board of trustees in writing.

Notice of Meetings: No notice of meetings shall be necessary for meetings fixed by the By-Laws, but all trustees shall be given notice by the Secretary of all special meetings of the Board. Such notice can be given by letter, or any other means but must be given each trustee a sufficient length of time before the meeting to allow him to reach the place of meeting by the usual means of travel. The notice of special meetings must inform the trustee of the business to come before the meeting.

7. Amendments.

These By-Laws may be amended by a vote of the stock represented at the annual meeting of the stockholders or at any special meeting of the stockholders called for that purpose.

7.

NOTICE TO INCREASE (OR DECREASE) THE
CAPITAL STOCK.

of the

..... COMPANY.

To the stockholders of the Company:

You and each of you are hereby notified that a stock-
holders meeting of the Company will be held
at the principal place of business of said Company in
the City of, County of, State of Wash-
ington, at the hour of .. o'clock .. M., on the day
of, A. D. 19.., for the purpose of voting upon
the question of increasing (or decreasing) the capital
stock from dollars to dollars.

Dated and signed at, Washington, this
day of, A. D. 19.., by the undersigned, being
a majority of the trustees of said Company.

..... Company.

By

Trustee.

..

.....

Trustee.

.....

Trustee.

8.

CERTIFICATE OF INCREASE (OR DECREASE)
OF THE CAPITAL STOCK

of the

..... COMPANY.

State of Washington

ss.

County of

(Chairman,) (Secretary,)

....., being each duly sworn,
each for himself deposes and says:

That they were the Chairman and Secretary, respectively, of the stockholders meeting of the Company, held in pursuance of and at the time and place fixed by the notice of meeting attached hereto, and called for the purpose of increasing (or diminishing) the capital stock of the said Company.

That, at said meeting, shares of stock, being more than two-thirds of all the shares of stock of said Company, were represented and took part in said meeting and, after said meeting had been duly called to order and a vote was had to increase (or decrease) the capital stock of said Company, from dollars to dollars, shares of the stock of said Company, voted in favor of the increasing (or decreasing) the capital stock of said Company from dollars to dollars, and the number of shares voting in favor of such increase (or decrease) are more than two-thirds of the whole number of the shares of stock in said Company.

That the following is a true and correct statement of the condition of said Company at this date,

to-wit: Amount of capital actually paid in dollars.

The whole amount of debts and liabilities of said Company is dollars.

The amount to which the capital stock of said Company is to be increased (or decreased) is dollars.

.....
Chairman of the above described meeting.

.....
Secretary of the above described meeting.

Subscribed and sworn before me this day of
.... A. D. 19...

.....
Notary Public in and for the State of Washington, residing at

We the undersigned, being a majority of the trustees of the Company, hereby certify that the above is a true and correct statement of the proceedings of the above described meeting.

.....
Trustee of the Company.

.....
Trustee of the Company.

.....
Trustee of the Company.

9.

LIST OF OFFICERS.

of the

..... COMPANY.

State of Washington, ss.

County of

..... being duly sworn, on oath, deposes and says:

That he is the President of the Company, a corporation, with its principal place of business in the City of, County, State of Washington, and was elected such President on the day of, A. D. 19.., to serve until the day of A. D. 190...

That the following is a true and correct list of the officers of the said Company, with their respective titles of office, their names and addresses.

Officers	Names	Addresses
Trustee
Trustee
Trustee
President
Vice-President
Secretary
Treasurer
.....
.....

That all of said officers were elected at the same time and for the same term as the affiant.

.....
Subscribed and sworn to before me this ... day of

A. D. 19...

(Corporate seal.)

Attest.

.....
Notary Public in and for the
State of Washington, residing

Secretary. at

10.

POWER OF ATTORNEY TO VOTE SHARES.

I., of the city of, County, State of, hereby nominate and appoint of the city of, County, State of, my true and lawful attorney, for me and in my place and stead, to vote all shares of stock held by me in the Company, at the regular and special meetings of the stockholders of said Company until this power of attorney is revoked by me in writing.

Dated at, this day of

A. D. 19...

Signed in presence of

.....

.....

.....

Sec. 29.

11.

NOTICE OF REMOVAL OF PRINCIPAL PLACE OF
BUSINESS
of the

..... COMPANY.

To whom it may concern:

Notice is hereby given that on or about the day of, A. D. 190..., the principal place of business of the Company will be removed from the City of, in County, State of Washington, to the City of, in said County and State. Company.

(Corporate seal.)

By.....
Secretary.

Sec. 47.

12.

NOTICE OF ANNUAL MEETING.

of the

STOCKHOLDERS OF THE COMPANY.

To the Stockholders of the Company:

You and each of you are hereby notified that the annual meeting of the stockholders of the Company will be held at the office of the company, in the City of, County, State of Washington on theday of, A. D. 19.., at the hour of o'clock, .. M.

You are further notified that the following matters will be considered and acted upon at this meeting (here set out any matters of unusual importance to come before the meeting.)

Dated at, Washington, this ... day of, A. D. 19...

..... Company.

By.....

Secretary.

13.

NOTICE OF A SPECIAL MEETING OF THE STOCK-
HOLDERS OF
..... COMPANY.

To the Stockholders of Company.

You and each of you are hereby notified that there will be a special meeting of the stockholders of the Company, at the office of the Company in the city of, County, in the State of Washington, at the hour of ... o'clock .. M., on the ... day of A. D. 19.., for the purpose of (Here set out in full the matters to be considered at the meeting).

Dated at, Washington, this ... day of..... A. D. 19...

..... Company.
By
Secretary.

14.

RECORD OF STOCKHOLDERS.

Names	No. of Shares	Time When Shares Acquired
A.		
.....day of A. D. 19...
.....day of A. D. 19...
B.		
.....day of A. D. 19...
.....day of A. D. 19...
C.		
.....day of A. D. 19...
.....day of A. D. 19...

15.

NOTICE OF FIRST MEETING OF THE BOARD OF
TRUSTEES.

of the COMPANY.

To the trustees of the Company:

You and each of you are hereby notified that the first meeting of the Board of Trustees of the Company will be held at No., street, in the City of, County, State of Washington, at the hour of ... o'clock .. M., for the transaction of any business that may come before this meeting.

Dated at, Washington, this ... day of

A. D. 19... ..

Trustee of the Company.

Sec. 32.

Trustee of the Company.

16.

NOTICE OF A REGULAR (OR THE ANNUAL)
MEETING.

of the

BOARD OF TRUSTEES OF THE COMPANY.

To the trustees of the Company:

You and each of you are hereby notified that a regular (or the annual) meeting of the Board of Trustees of the Company will be held at the office of the Company, in the City of, County, in the State of Washington, at the hour of ... o'clock .. M., on the ... day of, A. D. 19..., for the purpose of transacting such business as may properly come before the meeting.

You are further notified that (Here set out any matters of unusual importance to come before the meeting.)

Dated at, Washington, this ... day of
A. D., 19...

..... Company.

By, Secretary.

17.

NOTICE OF A SPECIAL MEETING OF THE BOARD
OF TRUSTEES.

of the

..... COMPANY.

To the trustees of the Company:

You and each of you are hereby notified that there will be a special meeting of the Board of Trustees of the Company, at (Here state place of meeting), in the City of, County, in the State of Washington at the hour of ... o'clock .. M., on the ... day of ... A. D. 19... for the purpose of (Here set out the matters to be considered at the meeting.)

Dated at, Washington, this ... day of ... A. D. 19...

..... Company.

By

Secretary.

18.

TRUSTEE'S OATH OF OFFICE.

State of Washington,

ss.

County of

....., being duly sworn, on oath deposes and says:

That on the ... day of ..., A. D. 19..., he was duly and regularly elected a trustee of the Company, a corporation with its principal place of business in the city of, in the County of, and State of Washington, to serve as such trustee until the ... day of, A. D. 19...

That he will faithfully and conscientiously perform all the duties of his said office as such trustee.

.....
Subscribed and sworn to before me this ... day of.....,
A. D. 19...

.....
Notary Public in and for the State of Washington, re-
siding at

Sec. 29.









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